

***United States Court of Appeals
for the Second Circuit***



APPENDIX

NO. 77-4019

United States Court of Appeals

FOR THE **SECOND** CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LOCAL 259, UNITED AUTOMOBILE, AEROSPACE,
AND AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA,
Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D. C. 20570.



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I N D E X

Chronological List of Relevant Docket Entries.....	1
Administrative Law Judge's Decision Dated March 24, 1976.....	2
Board's Decision and Order, Dated June 30, 1976.....	15
Letter Dated February 14, 1975, from Richard C. Atherton (GC#3).....	26
Excerpts from transcript of proceedings.....	28

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES:

In the Matter of: Local 259, United Automobile
Aerospace, and Agricultural
Implement Workers of America
Board Case No.29-CB-2130

5. 7.75	Charge filed
7.31.75	Complaint and Notice of Hearing dated
8.19.75	Respondent's Answer dated
10. 1.75	Order Rescheduling Hearing dated
11.18.75	Order Rescheduling Hearing dated
12. 9.75	Hearing Opened
12.10.75	Hearing Closed
3.24.76	Administrative Law Judge's Decision issued
4. 7.76	General Counsel's Exceptions to the Administrative Law Decision received
4.24.76	Charging Party's Exceptions to the Administrative Law Decision received
6.30.76	Decision and Order of the National Labor Relations Board dated

JD-177-76
West Islip, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D. C.

LOCAL 259, UNITED AUTOMOBILE,
AEROSPACE, AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA

(ATHERTON CADILLAC, INC.,)

and

Case 29-CB-2130

ANTHONY DAZZO, An Individual

Harold Weinrich, Esq., Brooklyn,
NY, for the General Counsel.
Michael Schnipper, Esq., and
Sipser, Weinstock, Harper &
Dorn (Leonard Leibowitz, Esq.),
with them on the brief, New York,
NY, for the Respondent.

DECISION

Statement of the Case

ALVIN LIEBERMAN, Administrative Law Judge: The trial in this proceeding, with all parties except the charging party represented, was held before me in Brooklyn, New York, on December 9 and 10, 1975, upon the General Counsel's complaint dated July 31, 1975, 1/ and respondent's answer. 2/ In general, the issues litigated was whether respondent

- 1/ The complaint was issued pursuant to a charge filed on May 7, 1975, by Anthony Dazzo.
- 2/ During the trial the answer was amended to admit pars. 2, 3, 4, 5, 6 and 7 of the complaint.

violated Section 8(b)(1)(B) of the National Labor Relations Act, as amended (Act). 3/ More particularly, the questions for decision are as follows:

5 1. Was Anthony Dazzo, the charging party, at times material to this proceeding, a representative of Atherton Cadillac, Inc. (Cadillac), for the purpose of adjusting grievances within the meaning of Section 8(b)(1)(B) of the Act?

10 2. Assuming an affirmative answer to the foregoing question, did respondent in violation of Section 8(b)(1)(B) of the Act restrain or coerce Cadillac by demanding that Cadillac discharge Dazzo?

15 3. Again assuming an affirmative answer to question 1, above, did respondent in violation of Section 8(b)(1)(B) of the Act restrain or coerce Cadillac by refusing to make concessions during its bargaining with Cadillac unless Cadillac discharged Dazzo?

20 Upon the entire record, upon my observation of the witnesses and their demeanor while testifying and having taken into account the brief submitted by respondent 4/ and the arguments made by the parties, 5/ I make the following:

Findings of Fact

25

I. Jurisdiction

30 Cadillac, a New York corporation, is engaged at West Islip, New York, in selling, at retail, and servicing, automobiles. During the year ending on July 30, 1975, a representative period, Cadillac's gross volume of business exceeded \$500,000. During the same period Cadillac purchased automobiles and automobile parts valued at in excess of \$50,000

35 3/ This section of the Act provides:

Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents---

40 (1) to restrain or coerce (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

4/ The General Counsel did not submit a brief.

5/ Although all the arguments of the parties and the authorities cited by them, whether made orally at the trial or appearing in respondent's brief may not be discussed in this Decision, each has been carefully weighed and considered.

45

from vendors located outside the State of New York. Accordingly, I find that Cadillac is engaged in commerce within the meaning of the Act and that the assertion of jurisdiction over this matter by the National Labor Relations Board (Board) is warranted.

II. The Labor Organization Involved

Respondent is a labor organization within the meaning of the Act.

III. Introduction

Briefly, this case is concerned with events preceding and following respondent's certification as the bargaining agent of Cadillac's service department employees. In this connection, the complaint alleges, and respondent denies, that during bargaining between respondent and Cadillac after respondent's certification respondent restrained and coerced Cadillac, in violation of Section 8(b)(1)(B) of the Act, by demanding that Cadillac discharge Anthony Dazzo, asserted in the complaint to have been Cadillac's "representative for the purpose of adjustment of grievances." The complaint further alleges, and respondent also denies, that respondent additionally restrained and coerced Cadillac by conditioning "the grant of concessions in bargaining and agreement upon a contract upon [Cadillac's] compliance with [its] demand" for Dazzo's discharge, thereby causing Cadillac to terminate Dazzo's employment.

IV. Preliminary Findings and Conclusions 6/

A. Dazzo's Status

In 1965 Anthony Dazzo began to work for Cadillac as a mechanic. After a series of promotions Dazzo, in about 1971 or 1972, was appointed by Cadillac as its general manager and he occupied this position until his discharge. 7/

6/ The purpose of these findings and conclusions is to furnish a frame of reference within which to consider the facts relating to respondent's alleged unfair labor practices and to the conclusions to which they may give rise. To the extent that the contentions of the parties relate to the findings and conclusions made here they will be treated here, although they, as well as the findings and conclusions, may again be considered in other contexts.

7/ There is dispute regarding the date of Dazzo's discharge. The General Counsel claims that it occurred on February 11, 1975. Respondent asserts that the discharge took place some 16 days later. In the view I take of this case the actual date on which Dazzo's employment was terminated is immaterial.

As general service manager Dazzo performed the duties usually inherent in such a position. These included overall supervision of Cadillac's service department and the employees who worked there; hiring, disciplining and firing employees; scheduling work; and over-seeing the quality of the work done in the service department.

In addition, Dazzo handled grievances filed by Cadillac's employees. In this connection, as appears from Dazzo's uncontroverted testimony, he discussed and settled grievances with the shop steward of the union which preceded respondent as the bargaining agent of Cadillac's service department employees and with that union's delegates.

Accordingly, I conclude that Dazzo was a representative of Cadillac for the adjustment of grievances within the meaning of Section 8(b)(1)(B) of the Act.

B. Respondent's Organizing Campaign and
Accompanying Events

In November 1974 respondent instituted a campaign to unseat another union as the bargaining representative of Cadillac's service department employees. On January 17, 1975, ^{8/} respondent prevailed at a representation election and, on January 31, it was certified as the bargaining agent of those employees.

While respondent's campaign was in progress Anthony Dazzo, who was then Cadillac's general service manager, was instructed by Richard Atherton, Sr., Cadillac's president, to dampen the ardor of Cadillac's service department employees for respondent. ^{9/} To this end, on about January 10, a week before the election, Dazzo laid off several employees, including a member of respondent's organizing committee, and announced at a meeting attended by service department employees that there would be further layoffs the following week. In addition, some days later, Dazzo told Robert McDonald, also a member of respondent's organizing committee, that he intended to reduce an employee's wages.

C. Events Between the Election and the
Commencement of Bargaining

On about January 20, 1975, Louis Salvatore, respondent's secretary, and Steven Elliot, a representative of respondent, asked

^{8/} All dates hereinafter mentioned without stating a year fall within 1975.
^{9/} In this respect, the General Counsel stated in his opening address that "independently, as well as under the instructions of . . . Mr. Atherton, [Dazzo] engaged in what might commonly be called . . . the employer's campaign against the union."

Anthony Dazzo to recall the laid off employees. Upon his refusal to do so, Salvatore remarked, as Elliot testified, "this [is] a declaration of war."

5 The next day Salvatore and Elliot met with Richard Atherton, Sr., Cadillac's president, and again asked that the laid off employees be recalled, expressing the view that "there was no justification for the layoff." Disagreeing with this, Atherton, Sr., said that "the business [is] suffering losses."

10 During this meeting Atherton, Sr., informed Salvatore and Elliot that "Tony [Dazzo] runs my shop, what has to be has to be." To this Salvatore responded "Mr. Dazzo is creating trouble." 10/

15 Several days after this Robert McDonald, a member of respondent's organizing and bargaining committees, observed that persons bringing their automobiles to Cadillac's shop for repair were refused service and told, notwithstanding that mechanics were idle because there was no work for them to do, that the service department was "booked up and . . . couldn't handle the work." McDonald reported this to the service department employees whereupon they, on their own initiative and without respondent's sanction, engaged in a slowdown lasting about 2 1/2 hours to protest, among other things, the turning away of work, which they believed had been ordered by Dazzo, because that practice had an adverse effect upon their earnings.

25 The next day Richard Atherton, Jr., Cadillac's vice president, came into the shop seeking the reason for the slowdown. In this connection, he asked McDonald and Edward Zegilla, another member of respondent's organizing and bargaining committees, "what the problem was?" Atherton, Jr., was informed by McDonald that "the problem is Dazzo; lighten Dazzo up, he is harassing and threatening the men; [that] Dazzo [was] turning away work; [and that] the men [were] upset by the proposed layoffs." 11/

30 10/ The findings in this and the preceding paragraph are based upon, and the quotations appearing in the text are taken from Elliot's testimony.

35 11/ It will be remembered, in this connection, that on January 10, Dazzo announced that there would be layoffs in addition to those employees who had been laid off that day.

Upon receiving this information, Atherton, Jr., asked McDonald and Zegilla whether they had "any recommendations for a new service manager." They suggested that an employee who was then a service writer would be a "good" man for the position. 12/

V. The Alleged Unfair Labor Practices

A. Facts Concerning Respondent's Alleged
Violations of Section 8(b)(1)(B)
of the Act 13/

1. The bargaining through the date
of Dazzo's discharge

Bargaining between respondent and Cadillac for a collective agreement covering Cadillac's service department employees began on February 3, 1975, and continued until March 3, 14/ on which date a contract was agreed upon. On January 22, before bargaining commenced, Steven Elliot, a representative of respondent, met with Cadillac's service department employees for the purpose of formulating respondent's bargaining proposals. Among the suggestions made by the mechanics in the unit, who were then receiving \$6 an hour, was that respondent seek a \$2 or \$3-an-hour increase for them. These were characterized by Elliot as "crazy figures" and it was ultimately decided that respondent would propose a \$1.50-an-hour increase for mechanics which Elliot felt, as he testified, was a "rational . . . bargaining figure to start with."

Neither at this meeting, nor at any other meeting conducted by respondent with Cadillac's employees while bargaining was in progress, did anyone suggest that respondent seek the discharge of Anthony Dazzo, Cadillac's general service manager, or that respondent condition any bargaining concession or the signing of a contract upon Dazzo's discharge.

12/ The findings in this and the preceding two paragraphs are based on testimony given by Steven Elliot a representative of respondent, McDonald, from which the unattributed quotations appearing in the text have been taken, and Zegilla.

13/ As already noted, the complaint alleges that by demanding and causing the discharge of Anthony Dazzo, a grievance adjuster for Cadillac, and by conditioning bargaining concessions and agreement upon a contract upon Dazzo's discharge respondent restrained and coerced Cadillac in violation of Section 8(b)(1)(B) of the Act.

14/ In addition to the negotiating sessions mentioned in the text, negotiating sessions were held on February 11, 20, 25 and 27.

At the first negotiating session, held, as set forth above, on February 3, respondent submitted its proposals. These included an increase in the wages of mechanics from \$6 to \$7.50-an-hour, an increase in the incentive rate for polishers, two additional holidays and plans for vacations, sick leave and pensions. Respondent also requested at this session and at every subsequent one that the laid off employees be recalled.

Respondent did not modify any of its proposals until the last meeting. In this regard, at the meeting of February 11 or 20, Louis Salvatore, respondent's secretary and bargaining spokesman, explained why respondent refused to make changes in its proposals. As Elliot, a representative of respondent, testified concerning this, Salvatore stated that Cadillac's "manager is making things tough, harassing the committee, this is why the men are not being flexible, and why they want the contract terms that have been proposed." In like vein, as Salvatore testified, he told Richard Atherton, Sr., Cadillac's president, that "problems [created by management] with threats of more layoffs and threats of cuts in pay . . . makes bargaining tough."

Dazzo, Cadillac's general service manager, was discharged on one of the days on which respondent and Cadillac were engaged in bargaining. ^{15/} The probative evidence shows, however, that at no time during the negotiations did respondent expressly request that Dazzo be discharged or expressly condition the grant of any concession in bargaining or the signing of a contract on Dazzo's discharge.

At the commencement of the negotiating session on February 27, the day on which, respondent claims, Dazzo was discharged, the monetary items still open included the wage rate for mechanics for whom respondent had requested a \$1.50-an-hour increase; the pay of a parts department employee; and the incentive rate for polishers. Upon being informed that respondent was not inclined at that time to make changes in its proposals in any of these areas, Cadillac's lawyer asked respondent's negotiators to leave the room so that he could confer with Atherton, Sr., Cadillac's president. They complied and for the next half hour they wandered about in Cadillac's showroom and shop.

^{15/} Dazzo testified that he was discharged on February 11. Respondent asserts that the discharge occurred on February 27. As already pointed out the actual date on which Dazzo's employment was terminated is immaterial. Nevertheless, in view of the sequence of events it is more likely that Dazzo was dismissed on the latter, rather than the former, date.

When bargaining resumed Cadillac's lawyer announced as Salvatore, respondent's secretary and bargaining spokesman, testified, that Dazzo had been discharged; 16/ that he had been "fired . . . based on what [Richard Atherton, Jr., Cadillac's vice president] had found out through [his] investigations . . . so we feel that is the problem and we are going to get rid of the problem forever." Cadillac's lawyer then asked whether respondent's negotiators had any comment. Salvatore replied, as he further testified, that he was not there "to discuss . . . Dazzo's discharge [, but] to discuss a contract and [he] want[ed] to discuss a contract, not . . . Dazzo's discharge [, which was] not [his] cup of tea."

Dazzo testified, regarding his discharge, that on February 11, while respondent's negotiators were on Cadillac's premises, Atherton, Sr., Cadillac's president, told him that "union agents . . . demanded that [he] be terminated; [that] they wouldn't negotiate a contract; [and that] if [he] wasn't off the premises that day they would strike."

The General Counsel did not call Atherton, Sr., as a witness to support Dazzo's testimony, nor did he explain his failure to do so. Instead, to bolster the testimony given by Dazzo the General Counsel offered in evidence a letter 17/ on Cadillac's letterhead signed by Atherton, Sr., not for the truth of its contents, but, the General Counsel stated, "as corroborative of . . . Dazzo's testimony concerning the circumstances of his discharge." The letter states that "a Union dispute arose and to avoid a strike, Mr. Dazzo became the focal point of the dispute that made it necessary to relieve Mr. Dazzo of his duties."

2. The bargaining following
Dazzo's discharge

During the evening of February 27, 1975, Louis Salvatore, respondent's secretary and bargaining spokesman, and respondent's negotiating committee met with Cadillac's service department employees. The employees, who had previously expressed their dissatisfaction with the slow progress of the negotiations, urged respondent's negotiators to lower their bargaining proposals and to settle the contract as quickly as possible. 18/

16/ Cadillac's service department employees became aware of this very quickly.

17/ G. C. Exh. 3.

18/ It should be borne in mind that by this time bargaining between respondent and Cadillac had been in progress for about a month.

Accordingly, at the next negotiating session, held on March 3, respondent reduced its wage increase proposal for mechanics from \$1.50-an-hour to \$1.11-an-hour and also reduced the amount of its incentive proposal for polishers. With these modifications Cadillac accepted all of respondent's other proposals and the two parties entered into a contract.

B. Contentions and Concluding Findings Concerning
Respondent's Alleged Violations of
Section 8(b)(1)(B) of the Act

The complaint alleges, and the General Counsel contends, that respondent violated Section 8(b)(1)(B) of the Act ^{19/} by demanding that Cadillac discharge Anthony Dazzo whose duties included the adjustment of grievances, and that in furtherance of this demand respondent "conditioned the grant of concessions in bargaining upon [Cadillac's] compliance with said demand." As was stated in Slate Belt Apparel Contractors' Association, Inc., 122 NLRB 1390, 1402, enf'm't denied on other grounds, 274 F. 2d 376 (C.A. 3), "no finding is permitted that [Section 8(b)(1)(B)] has been violated without proof that the labor organization or its agents threatened or exerted restraint or coercion against the employer." ^{20/}

The "proof" referred to in Slate Belt to establish a violation of Section 8(b)(1)(B) of the Act may, of course, be direct or circumstantial, as is the case in establishing a violation of any other section of the Act. ^{21/} And the General Counsel relies on both.

The direct evidence adduced by the General Counsel to show that respondent "exerted restraint or coercion" to compel Cadillac to terminate Dazzo's employment before it would make bargaining concessions

^{19/} Although earlier set forth, the terms of Section 8(b)(1)(B) are repeated here for ready reference. In pertinent part the section provides that it "shall be an unfair labor practice for a labor organization or its agents . . . to restrain or coerce . . . an employer in the selection of his representative for the [purpose] of . . . the adjustment of grievances."

^{20/} The expression "restraint or coercion" is broad. Included within its compass, it seems to me, is a union's demand for the discharge of an employer's grievance adjuster and its conditioning a bargaining position upon the employer's compliance with that demand. But, as will be shown, there is no probative evidence of this in the record.

^{21/} N.L.R.B. v. Link-Belt Company, et al. 311 U.S. 584, 602.

or agree upon a contract consists of Dazzo's testimony and the letter 22/ signed by Richard Atherton, Sr., Cadillac's president. Concerning the former, Dazzo testified, as above set forth, that he was told by Atherton, Sr., that respondent's agents demanded that he be discharged and unless Cadillac complied respondent would not enter into a contract with Cadillac and would strike. The letter, it will be remembered, sets forth that Dazzo "became the focal point of [a union] dispute" and that "to avoid a strike" Dazzo was "reliev[ed] of his duties."

The testimony given by Dazzo concerning what he was told by Atherton, Sr., as to what the latter was informed by respondent's agents regarding their demand for Dazzo's discharge is clearly hearsay. This being so, it has no probative value. 23/ Therefore, it cannot, alone, form the basis for a finding that respondent violated Section 8(b)(1)(B) of the Act. N.L.R.B. v. Amalgamated Meat Cutters, etc., 202 F. 2d 671, 673 (C.A. 9), cited with approval by the Board in American Rubber Products Corp., 106 NLRB 73, 75, and Haddock-Engineers, Limited et al., etc., 104 NLRB 994, 995.

In apparent recognition of this precept, the General Counsel sought to corroborate Dazzo's testimony by the letter signed by Atherton, Sr. The difficulty with this position is that the letter purporting to set forth respondent's attitude toward Dazzo's continued employment by Cadillac, like Dazzo's testimony and for similar reasons, is also hearsay. Accordingly, the letter, being itself hearsay, cannot be availed of to corroborate Dazzo's testimony, which also suffers from that infirmity. Carl J. Austad & Son, Inc., 163 NLRB 1, 7.

Corroboration of Dazzo's testimony could have been obtained from Atherton, Sr., who, presumably, would have had first hand knowledge of respondent's demand for Dazzo's discharge as the price of avoiding a strike against Cadillac and as the quid pro quo for a contract, if such a demand actually had been made. Yet, without explanation, the General Counsel failed to call Atherton, Sr., as a witness. His failure to do so raises the inference, which I draw, that had this been done Atherton, Sr., would not only not have corroborated Dazzo's story, but would have given testimony favorable to respondent. Golden State Bottling Co., Inc., etc., et al. v. N.L.R.B., 414 U.S. 168, 174; Interstate Circuit, Inc., et al. v. United States, 306 U.S. 208, 226; N.L.R.B. v. Dorn's Transportation Company, Inc., 405 F. 2d 706, 713 (C.A. 2), enf'g, in this respect, 168 NLRB 457.

22/ G. C. Exh. 3.

23/ Dorwood Rental Company, 178 NLRB 635, 636; Thrush Press, Inc., 171 NLRB 575, 580.

whole must present a substantial basis of believable evidence pointing toward the unlawful one." 25/ Upon careful consideration of the evidence in the record, as well as the General Counsel's significant failure to call Atherton, Sr., Cadillac's president, as a witness, as set forth above, I do not find such a "substantial basis of believable evidence" to be present.

Accordingly, upon the entire record I conclude that the General Counsel has not proven by a preponderance of the evidence that respondent violated Section 8(b)(1)(B) of the Act. My order will, therefore, provide that the complaint be dismissed.

Upon the basis of the foregoing findings of fact, and upon the entire record in this case, I make the following:

15

Conclusions of Law

1. Cadillac is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. While employed by Cadillac as general service manager Anthony Dazzo was Cadillac's representative for the adjustment of grievances within the meaning of Section 8(b)(1)(B) of the Act.

4. It has not been established by a preponderance of the evidence that respondent engaged in unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following: 26/

25/ N.L.R.B. v. McGahey et al. etc., 233 F. 2d 406, 413 (C.A. 5).
26/ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

ORDER

It is ordered that the complaint be, and the same hereby is,
dismissed.

Dated at Washington, D. C.

Alvin Lieberman

Alvin Lieberman
Administrative Law Judge

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LOCAL 259, UNITED AUTOMOBILE,
AEROSPACE, AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA
(Atherton Cadillac, Inc.)

and

Case 29--CB--2130

ANTHONY DAZZO, an Individual

DECISION AND ORDER

On March 24, 1976, Administrative Law Judge Alvin Lieberman issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Charging Party filed exceptions and supporting briefs. The Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The complaint alleges that Respondent restrained or coerced Atherton Cadillac, Inc. (Employer), in violation of Section 8(b)(1)(B) by demanding that it discharge service department general manager, Anthony Dazzo, and by "conditioning the grant of concessions in bargaining and agreement upon a contract" upon compliance with the demand for Dazzo's discharge.

The record reveals that Dazzo was responsible for overall supervision of the Employer's service department employees; his duties included hiring, firing, discipline, scheduling of work, and overseeing the quality of the work. He discussed and settled grievances with the shop steward. On these facts, in agreement with the Administrative Law Judge, we conclude that Dazzo was a representative of Cadillac for the adjustment of grievances within the meaning of Section 8(b)(1)(B) of the Act.

One week prior to a representation election held on January 17, 1975,^{1/} at which Respondent prevailed, Dazzo laid off several employees, including a member of Respondent's organizing committee. He also announced that there would be more layoffs in the future and stated that he intended to reduce an employee's wages. About January 20, 1975, two representatives of Respondent, Salvatore and Elliot, asked Dazzo to recall the laid-off employees. Dazzo refused and Salvatore remarked "this [is] a declaration of war." Thereupon Salvatore and Elliott protested the matter to the Employer's president, Richard Atherton, Sr., who indicated that the business was suffering losses and that Dazzo was in full charge of the shop. To this Salvatore responded "Mr. Dazzo is creating trouble."

Several days after this, the employees noted that work was being turned away from the shop even though there were idle mechanics. The employees believed that Dazzo was responsible and on their own initiative engaged in a work slowdown lasting about 2-1/2 hours. The next day Richard Atherton, Jr., the Employer's vice president, came into the shop seeking the reason for the slowdown. Robert McDonald, a member of Respondent's organizing and bargaining committee, replied

^{1/} All dates hereinafter are 1975.

"the problem is Dazzo; lighten Dazzo up, he is harassing and threatening the men," he is "turning away work," and the men are "upset by the proposed layoffs." Atherton then asked McDonald and Zegilla whether they had "any recommendations for a new service manager." They suggested an employee who had been a service writer and who was ultimately given the job after Dazzo's discharge.

Collective bargaining began on February 3, and continued until March 3, on which date a contract was agreed upon. Just before the start of bargaining Elliot met with the employees for the purpose of formulating bargaining proposals. A strike deadline of March 1 was agreed upon. There is no evidence that anyone at this or any other meeting with the employees suggested that Respondent seek the discharge of Dazzo or that Respondent condition any bargaining concessions or the signing of a contract upon Dazzo's discharge.

At the first negotiating session Respondent submitted its proposals and requested that the laid-off employees be recalled. Respondent did not modify any of its proposals or demands regarding the laid-off employees until the last meeting. At one of the mid-February sessions, Salvatore, Respondent's secretary and bargaining spokesman, explained why Respondent refused to make changes in its proposal. He stated your "manager is making things tough, harassing the committee; this is why the men are not being flexible and why they want the contract terms that have been proposed."

At one of the February negotiating sessions, after being informed that Respondent was standing firm with regard to its proposals concerning the outstanding wages issues, the Employer adjourned the meeting for a half hour, and then announced

that Dazzo had been discharged.^{2/} Employer's counsel announced that he had been fired on the basis of what Richard Atherton, Jr., had found out through his investigations concerning Dazzo's turning away work and other problems. He further stated "we feel that is the problem and we are going to get rid of the problem forever."

On the evening of February 27, Salvatore met with the employees. The employees, who had previously expressed their dissatisfaction with the slow progress of the negotiations and with the conditions in the shop which were caused by Dazzo, and who had previously stated that they could not work with Dazzo, instructed Respondent's negotiators to lower their bargaining proposals, negotiate past the strike deadline, and settle the contract as quickly as possible, because the biggest problem, Dazzo, was gone. Accordingly, at the next meeting Respondent reduced its wage increase proposals, and with these modifications the Employer accepted all of Respondent's other proposals.

Dazzo testified regarding his discharge that Atherton, Sr., told him that "union agents . . . demanded that [he] be terminated; [that] they wouldn't negotiate a contract; [and that] if [he] wasn't off the premises that day they would strike." The General Counsel did not call Atherton, Sr., as a witness. In an attempt to corroborate Dazzo's testimony, the General Counsel introduced a letter of reference on Company stationery signed by Atherton, Sr., which states

^{2/} The date of Dazzo's discharge is not clear on the record herein. Dazzo testified that he was discharged on February 11. Respondent asserts that the discharge occurred on February 27. The Charging Party has filed a motion to reopen the record seeking to adduce certain evidence relative to this issue. The motion is hereby denied as lacking merit. In our view the matters raised therein can be more apparently considered at the compliance stage of the proceeding.

that a "Union dispute arose and to avoid a strike, Mr. Dazzo became the focal point of the dispute that made it necessary to relieve Mr. Dazzo of his duties."

The General Counsel and the Charging Party contend that the circumstantial evidence herein leads to the inescapable conclusion that Respondent made it quite clear to the Employer that no bargaining would be accomplished unless Dazzo were removed.

Respondent contends that none of its agents ever demanded Dazzo's discharge or conditioned the grant of bargaining concessions thereon. It contends that its position on the negotiations was not in any way related to a demand for Dazzo's discharge but was merely privileged hard bargaining in response to recent layoffs and expected cuts in salary.

The Administrative Law Judge agreed with Respondent and dismissed the complaint. He concluded that the General Counsel had created at most only a suspicion that Respondent's motive was to secure Dazzo's discharge.^{3/}

We do not agree with the Administrative Law Judge's view of the evidence. We find that the evidence, although circumstantial, is sufficient to establish a violation herein.

3/ The Administrative Law Judge found that the General Counsel's failure to call Atherton, Sr., as a witness to corroborate Dazzo's hearsay testimony as to the reason for his discharge raises the adverse inference that Atherton, Sr., would not corroborate Dazzo's testimony and would have given testimony favorable to Respondent. He also refused to consider the letter of reference allegedly written by Atherton, Sr., as corroboration because the letter itself is hearsay. We agree as to the hearsay nature of Dazzo's testimony and of the letter; however, we find the adverse inference is improper here since Atherton, Sr., is clearly a witness equally available to both parties.

While it is true that Dazzo's discharge was never openly demanded, the record reveals an extensive pattern of statements and conduct through which Respondent conveyed a clear message to the Employer to discharge Dazzo and evidenced its unlawful motive. Thus, after an argument concerning the layoffs, for which Dazzo was responsible, Respondent's representatives "declared war" on Dazzo. Atherton, Sr., was thereafter told that Dazzo was creating trouble. After the slowdown, McDonald told Atherton, Jr., that the problem was Dazzo and suggested a replacement for him. During the negotiations Salvatore admitted that the bargaining strategy and proposals and the inflexibility with respect thereto were because of Dazzo. In sum, Respondent's message to fire Dazzo and its hostility toward Dazzo were repeatedly communicated to the Employer.

We view as particularly significant the fact that shortly after Dazzo's discharge Respondent substantially lowered its bargaining demands^{4/} and agreed to negotiate past the strike deadline of March 1; in fact, agreement was reached on March 3. This change in bargaining strategy occurred after Salvatore met with Cadillac's service department employees on February 27. At this meeting, the employees, who had previously protested the shop conditions for which Dazzo was responsible and who had previously said they could not work with Dazzo, told Salvatore to try and wrap up negotiations, modify their bargaining proposals, and reason with management, because the biggest problem, Dazzo, was gone. We are additionally persuaded by the fact that the Employer discharged Dazzo only after it was clear that bargaining was hopelessly stymied. Yet its stated reason

^{4/} Respondent reduced its wage increase proposal for mechanics from \$1.50 an hour to \$1.11 an hour and also reduced the amount of its lower incentive proposal for polishers.

involved the events surrounding the work slowdown, which occurred at least a month previously.

On the basis of all the foregoing we find that Respondent has violated Section 8(b)(1)(B) of the Act by engaging in a course of conduct during negotiations by which it restrained and coerced the Employer in the selection of Anthony Dazzo as its representative for the adjustment of grievances.

The Effect of the Unfair Labor Practice Upon Commerce

The activities of the Respondent set forth above, occurring in connection with the operation of Atherton Cadillac, Inc., as described in section I of the Administrative Law Judge's Decision, have a close, intimate, and substantial relationship to interstate, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The Remedy

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action, including the posting of appropriate notices, designed to effectuate the policies of the Act.

Specifically, we shall order that Respondent Union be required to send a letter to the Charging Party, with a copy to Atherton Cadillac, Inc., his former employer, stating that it has no objection to his employment or selection as a representative for the purposes of collective bargaining or the adjustment of grievances by the Employer and will not question his reemployment or reinstatement. We shall further order Respondent to make Anthony Dazzo whole for

any loss of earnings suffered by reason of its unlawful conduct, by payment to him of the sum of money equal to the amount that he would have earned from the date of the discrimination against him, less net earnings during said period.^{5/}

Backpay shall be computed with interest on a quarterly basis in the manner prescribed by the Board in F. W. Woolworth Company, 90 NLRB 289, 291-295 (1950), and Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

Conclusions of Law

1. By demanding that Atherton Cadillac, Inc., discharge Anthony Dazzo and by conditioning the grant of concessions in bargaining upon compliance with said demand Respondent has restrained and coerced Atherton Cadillac, Inc., and thereby has engaged in unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act.

The aforesaid unfair labor practice is an unfair labor practice within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Local 259, United Automobile, Aerospace, and Agricultural Implement Workers of America, New York, New York, its officers, agents, and representatives, shall:

^{5/} We are aware that on October 16, 1975, Respondent sent a letter to the Employer informing it that the Union had no objection to the employment of Anthony Dazzo. There is no evidence that Dazzo was ever made aware of this letter. Dazzo testified that 3 days before, on October 13, 1975, Atherton, Sr., after stating that he had checked with union representatives, told him he could have his job back if he would drop his suit against the Union. As we are unable to ascertain from the record all the events surrounding these communications, we shall leave to the compliance stage of the proceeding the determination of the significance of these events on any backpay liability.

1. Cease and desist from:

(a) Demanding of Atherton Cadillac, Inc., the discharge of Anthony Dazzo and conditioning the grant of concessions in bargaining upon compliance with said demand.

(b) In any like or related manner, restraining or coercing the aforesaid Employer or any other employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Send a written notice to Anthony Dazzo, with a copy to the Employer, stating that it has no objection to his employment or selection as a representative for the purposes of collective bargaining or the adjustment of grievances by the Employer and that it will not question his reemployment or reinstatement.

(b) Make Anthony Dazzo whole for any loss of earnings suffered by reason of its unlawful conduct in the manner provided above in the section entitled "The Remedy."

(c) Post at its offices at New York, New York, copies of the attached notice marked "Appendix."^{6/} Copies of said notice on forms provided by the Regional Director for Region 29, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter,

6/ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Sign and deliver sufficient copies of said notice to the Regional Director for Region 29 for posting by Atherton Cadillac, Inc., at all locations where notices to its employees are customarily posted, if said Employer is willing to so post.

(e) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D.C.

JUN 30 1976

Howard Jenkins, Jr., Member

John A. Penello, Member

Peter D. Walther, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT demand the discharge of Anthony Dazzo nor condition the grant of concessions in bargaining upon compliance with said demand.

WE WILL NOT in any like or related manner restrain or coerce Atherton Cadillac, Inc., or any other employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

WE WILL send a written notice to Anthony Dazzo, with a copy to Atherton Cadillac, Inc., stating that we have no objection to his employment or selection as a representative for the purposes of collective bargaining or the adjustment of grievances by Atherton Cadillac, Inc., and that we will not question his reemployment or reinstatement.

WE WILL make Anthony Dazzo whole for any loss of earnings suffered by reason of our unlawful conduct.

LOCAL 259, UNITED AUTOMOBILE,
AEROSPACE, AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA
(Labor Organization)

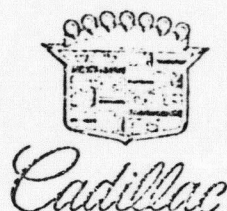
Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241, Telephone 212-330-7709.

26

STANDARD OF THE WORLD



ATHERTON CADILLAC, Inc.

555 SUNRISE HIGHWAY P. O. BOX 278 PHONE 587-6800
WEST ISLIP, N. Y. 11795

*GL #3
For Mr.
M.M. 1/7/75
Rec.*

February 14, 1975

To Whom It May Concern:

This is to inform you that Anthony Dazzo was dismissed from the firm of Atherton Cadillac, Inc., on February 11, 1975.

Mr. Dazzo had been in our employment since 1965, and rose to the position of General Service Manager. During this time his work was beyond question and exemplary.

Unfortunately, a Union dispute arose and to avoid a strike, Mr. Dazzo became the focal point of the dispute that made it necessary to relieve Mr. Dazzo of his duties.

I recommend him highly to any future employer.

Yours very truly,

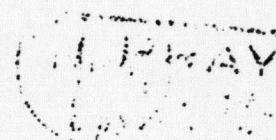
ATHERTON CADILLAC, INC.

RICHARD C. ATHERTON
PRESIDENT

RCA:ss



ATHERTON CADILLAC, INC.
555 SUNRISE HIGHWAY P. O. BOX 278
WEST ISLIP, NEW YORK 11795



Mr. Anthony Dargatzis
190 Thunder Road
Hollis, New York

11741

27

BEFORE THE NATIONAL LABOR RELATIONS BOARD

29th Region

In the Matter of:

LOCAL 259, UNITED AUTOMOBILE, AEROSPACE AND : Case No.
 AGRICULTURAL IMPLEMENT WORKERS OF AMERICA : 29-CB-2130
 (ATHERTON CADILLAC, INC.) :

and

ANTHONY DAZZO, an individual

16 Court Street,
 Brooklyn, New York
 Tuesday, December 9, 1975

The above-entitled matter came on for hearing,
 pursuant to notice, at 11:00 o'clock, a.m.

BEFORE:

ALVIN LEIBERMAN, Administrative Law Judge

APPEARANCES:

HAROLD WEINRICH, Esq. Brooklyn, New York,
 appearing on behalf of the
 Counsel for the General
 Counsel.

MICHAEL SCHNIPPER, Esq. Law firm of Sipser, Weinstock,
 Harper & Dorn, 380 Madison
 Avenue, New York, New York,
 appearing on behalf of the
 Union.

307-2100

I N D E XWITNESSES:DIRECTCROSSREDIRECTRECROSS

Steven Elliot

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66

Anthony Dazzo
(Voir Dire, P.107)
(Direct, resumed

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EXHIBITS:FOR IDENTIFICATIONIN EVIDENCE

General Counsel's:

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P R O C E E D I N G S

JUDGE LEIBERMAN: The trial will be in order.

This is a formal trial for the National Labor Relations Board in the matter of Local 259, United Automobile, Aerospace and Agricultural Implement Workers of America (Atherton Cadillac, Inc.) and Anthony Dazzo, Case No. 29-CB-2130.

The administrative law judge in this proceeding is Alvin Leiberman.

Will counsel please state their appearances?

MR. WEINRICH: Harold Weinrich, counsel for the general counsel, 16 Court Street.

MR. SCHNIPPER: Sipser, Weinstock, Harper & Dorn, by Michael Schnipper, 380 Madison Avenue, New York, New York.

JUDGE LEIBERMAN: I should like now to set forth some basic rules, which will be in effect throughout this trial.

From this time forth there will be no smoking, eating or drinking in this room while the trial is in session or in recess.

Except upon express permission from me, there will be no audible cross discussion between counsel.

Now, of course, I just don't want to hear what you're saying.

1 take testimony 'til the end of the day without any
2 break?

3 MR. WEINRICH: I would prefer to break now.

4 JUDGE LEIBERMAN: Any objection?

5 MR. SCHNIPPER: No objection.

6 JUDGE LEIBERMAN: We will recess nw and resume at
7 1 o'clock.

8 (Whereupon the lunch break was taken)

9 JUDGE LEIBERMAN: The trial will be in order.

10 MR. WEINRICH: Your Honor, general counsel calls
11 as its first witness Mr. Steven Elliot.
12 Whereupon,

13 STEVEN ELLIOT,

14 called as a witness, having been first duly sworn by
15 Judge Leiberman, was examined and testified as follows:

16 DIRECT EXAMINATION

17 Q (By Mr. Weinrich) Mr. Elliot, will you please
18 state your full name and address for the record?

19 A My name is Steve Elliot.

20 My address is 77 Candee Avenue, Saville, New York.

21 Q By whom are you employed, Mr. Elliot?

22 A Local 259, United Auto Workers Union.

23 Q In what capacity are you employed?

24 A As a representative of the union.

25 Q And, for how long have you held that position?

1 A Approximately three years.

2 MR. WEINRICH: Your Honor, at this time I request
3 permission to -- since he is a representative of Local
4 259, the respondent in this proceeding, pursuant to Rule
5 611C of the federal rules of evidence to use leading
6 questions --

7 JUDGE LEIBERMAN: Any objection?

8 MR. SCHNIPPER: No, your Honor.

9 JUDGE LEIBERMAN: You may do so.

10 Q Mr. Elliot, as a representative of Local 259, is
11 it correct that your responsibilities include the
12 organization of employees in automobile related industries?

13 A Right.

14 Q And, is it also correct that beginning in or about
15 November of 1974 you began, on behalf of Local 259, to
16 organize the employees of Atherton Cadillac employed in
17 the Atherton Service Department?

18 A Correct.

19 Q And, during that period beginning in November of
20 1974 until -- well, did there come a time an election was
21 held at Atherton?

22 A Yes.

23 Q That would be on January 17, 1975?

24 A Right.

25 Q And, at the time a majority of the ballots were cast

1 for Local 259, is that correct?

2 A Correct.

3 Q And, you were subsequently, or Local 259 was
4 subsequently certified as the collective bargaining
5 representative of Atherton Service employees, is that
6 correct?

7 A Right.

8 Q Now, during the period between November of 1974
9 and January the 17th of 1975 you had occasion to visit
10 the Atherton service shop and to engage in what would
11 commonly be referred to as an organizational campaign,
12 correct?

13 A I had visited the shop on two occasions. On my
14 initial visiting of the shop, and one time thereafter to
15 walk through the shop and say hello.

16 Q Those were the only two times that you went to the
17 shop prior to the shop becoming --

18 A Yes.

19 Q Now, during your organizational campaign, you had
20 worked closely with various employees employed by
21 Atherton, is that correct?

22 A Correct.

23 Q And, these employees became -- were served during
24 the time prior to election as a shop committee?

25 A Right, they were the organizing committee.

1 Q And, those employees would be Walter Sitler, Bob
2 McDonald and Ed Zegilla?

3 A Right.

4 Q And following the election were those -- did those
5 same three employees become part of the union's
6 negotiating committee?

7 A Right.

8 Q And, as part of the union's negotiating committee
9 those employees with yourself, as well as with other
10 representatives of the union met with Richard Atherton,
11 the president of Atherton Cadillac?

12 A Right, they were there during negotiations.

13 Q For the purpose of negotiating a contract?

14 A Right.

15 Q Was one Louis Stone also present at that time?

16 A Right.

17 Q And was he identified by Mr. Atherton as the
18 company's attorney?

19 A Right.

20 Q At this time did you currently have a contract?

21 A Yes.

22 Q With Atherton?

23 A Right.

24 Q Does Local 259 currently have shop stewards at
25 Atherton?

1 A Yes.

2 Q Who are these shop stewards if there are more than
3 one?

4 A The shop stewards now, the chief steward is
5 Robert McDonald, the other two stewards are Peter Bath
6 and a fellow named George, who is the polisher.

7 McDonald, Bath and a fellow named George.

8 Q Does Walter Sitler hold any position with the union
9 at this time?

10 A He was elected shop steward and then there was
11 another election held -- at this time he does not.

12 Q When did his term as shop steward end?

13 A Oh, maybe after two or three months into the contract.

14 Q So, that would have been when? The month, if you
15 can recall.

16 A I guess May or June. I'm not sure.

17 Q Of 1975?

18 A Yes. I'm not sure of the date.

19 JUDGE LEIBERMAN: When did you sign the contract?

20 THE WITNESS: The contract was ratified in early
21 March and I guess it was signed probably mid-March.

22 MR. SCHNIPPER: I'd just like to object at the
23 moment.

24 You asked the question, does Walter Sitler hold
25 any position with the union.

1 I'd like to make it clear that that is not
2 a salaried position --

3 JUDGE LEIBERMAN: Do you want to make a stipulation?

4 MR. SCHNIPPER: I'd like a stipulation that shop
5 steward is an elected --

6 JUDGE LEIBERMAN: If you want a stipulation --

7 MR. SCHNIPPER: May we go off the record?

8 JUDGE LEIBERMAN: You may go off the record.

9 (Discussion off the record)

10 JUDGE LEIBERMAN: Back on the record.

11 MR. SCHNIPPER: At this time I'd like to propose a
12 stipulation --

13 JUDGE LEIBERMAN: Is it agreed to?

14 MR. SCHNIPPER: It is agreed to -- that the position
15 of shop steward is one which is not a paid position with
16 the union.

17 Shop stewards are elected by the men.

18 MR. WEINRICH: I so stipulate, your Honor.

19 JUDGE LEIBERMAN: Right.

20 Q Mr. Elliot, is it correct that in January of 1975
21 another representative of Local 259, one Lou Salvatore
22 began to work with you at Atherton Cadillac?

23 A Right.

24 Q As part of the organizational campaign?

25 A Right.

1 Q And subsequently Mr. Salvatore took the primary
2 responsibility for the negotiations of the contract with
3 Atherton?

4 A Right.

5 Q However, you were present at all contract
6 negotiating sessions, weren't you?

7 A Yes, I was.

8 Q And Mr. Salvatore is currently the business representa-
9 tive for the Atherton shop?

10 A Yes, he is.

11 Q Now, prior to the election in January of 1975,
12 several of the employees of Atherton in its service
13 department were laid off, weren't they?

14 A Prior to the election, several were laid off and
15 I believe one was suspended.

16 Q Now, were one of the employees that were laid off
17 prior to the election a member of your shop committee?

18 A Yes.

19 Q Who would that be?

20 A That was Ed Zegilla.

21 Q Would you tell us the names, if you know them of
22 the other employees laid off?

23 A Let's see. Ed Zegilla was laid off, Peter Bath
24 was suspended, Al Guzzi, who is a used car mechanic was
25 laid off, a fellow named Bobby Fisher was laid off and

1 therewas another fellow who was a shifter, I believe,
2 who was also laid off.

3 Q Now, these employees were laid off by the
4 Atherton service manager, is that correct?

5 A Yes.

6 Q And the Atherton service manager was one Anthony
7 Dazzo, is that correct?

8 A Right.

9 Q Had you up until this point had occasion to meet Mr.
10 Dazzo -- up to the point of the layoffs?

11 A No, I hadn't.

12 Q And during the same period of time isn't it also
13 correct that Mr. Dazzo had advised the employees that there
14 would be future layoffs?

15 A I don't know of that.

16 Q Was that reported to you by the workers?

17 A We heard of future layoffs the day we had the meeting
18 with Mr. Dazzo.

19 JUDGE LEIBERMAN: There was, after the layoffs, Dazzo
20 told you there would be more layoffs?

21 THE WITNESS: That's the onlytime he spoke to me
22 personally, so I wouldn't know anything else.

23 JUDGE LEIBERMAN: Do you know what day that was?

24 THE WITNESS: The date of the meeting with him?

25 JUDGE LEIBERMAN: Yes.

1 I believe it was Bob McDonald.

2 JUDGE LEIBERMAN: You said you were informed that
3 there would be a protest that Dazzo sent this employee
4 out on an errand?

5 THE WITNESS: I talked to Lou Salvatore, I said one
6 of the fellows was missing, and find out where he was
7 sent to.

8 JUDGE LEIBERMAN: Did Salvatore tell you he would
9 protest this man being sent --

10 THE WITNESS: Yes, he did.

11 Q Now, following the election on January 17th, did you
12 have occasion to go to the Atherton service shop on
13 January 20th?

14 A Yes, we did.

15 Q You said we, did you go with Mr. Lou Salvatore?

16 A I went with Lou Salvatore, that's correct.

17 Q And at the time did you meet with Anthony Dazzo?

18 A Yes. Me, Lou Salvatore and the committee, less
19 Ed Zegilla, he was on layoff, he wasn't there.

20 Walter Sitler and Robert McDonald -- the four of us.

21 Q And at the time did you inform Mr. Dazzo that you
22 wanted him to put back the men who had been laid off?

23 A I didn't inform him, Lou Salvatore did.

24 Q You didn't inform him?

25 A Not me personally, no.

40
statement, "Will you put these people back to work"
not I.

Q But you, you did under oath make this statement that
Salvatore and I --

MR. SCHNIPPER: I object at this point.

I think the question has been answered.

Mr. Elliot explained the circumstances that he may
have been nodding in agreement.

JUDGE LEIBERMAN: Your objection is overruled.

You may proceed, Counsel.

Q Did you make the statement "Salvatore and I both told
Dazzo that we wanted him to put the men who had been laid
off back to work."

Did you make that statement under oath?

A I made that statement, yes.

Q Are you now testifying that that statement is
incorrect?

A No, I'm testifying that Mr. Salvatore made the
statement and maybe I nodded my head in agreement.

Q But you're saying that you did not use those words
to Mr. Dazzo?

A I personally did not use those words to Mr. Dazzo, no.
Those words were used, but not by me.

Q By Mr. Salvatore?

A Correct.

1 Q Now, Mr. Dazzo replied to that statement, did
2 he not?

3 A Yes, he did.

4 Q And is it correct that Mr. Dazzo said, "This is
5 my shp and I'm laying off more men this week"?

6 A That's correct.

7 Q Who spoke next?

8 Let me ask you this --

9 JUDGE LEIBERMAN: Wait, are you withdrawing the
10 question?

11 MR. WEINRICH: No.

12 A Who spoke next? I really could not say. It's been
13 three or four months now.

14 Q Isn't it correct that in response to Mr. Dazzo's
15 statement Mr. Salvatore told Dazzo that this was a
16 declaration of war?

17 A I believe he asked Mr. Dazzo if he was declaring war
18 on the union.

19 Q I again show you General Counsel's Exhibit No. 2
20 marked for the purposes of identification.

21 I call your attention to Paragraph 6 of that statement
22 on Page 4 and I ask you to read to yourself in that
23 paragraph beginning on the 9th line up from the bottom.

24 A Right.

25 Okay.

1 Q Now, I ask you again if in response to Mr. Dazzo
2 saying this is my shop and I'm laying more men -- I'm
3 laying off more men this week, Mr. Salvatore stated that
4 this was a declaration of war?

5 A Correct.

6 JUDGE LEIBERMAN Who said that now, Salvatore?

7 MR. WEINRICH: Mr. Salvatore.

8 Q And that was said by Mr. Salvatore at that meeting?

9 A Right.

10 Q At the time is it not correct that Mr. Salvatore then
11 asked Mr. Dazzo if he was in full control of the shop or
12 whether Mr. Dazzo had to answer to Mr. Atherton?

13 A Right.

14 Q Is it correct that Mr. Dazzo replied that he ran
15 his shop?

16 A Right.

17 Q Did Mr. Salvatore then indicate that he would see
18 Mr. Dazzo -- I'm sorry, I withdraw that.

19 Did Mr. Salvatore then tell Mr. Dazzo that he was
20 on his way to see Mr. Atherton?

21 A Right.

22 Q Now, you didn't see Mr. Atherton that day, January
23 20th, did you?

24 A No, we did not.

25 JUDGE LEIBERMAN: We, you mean neither you nor

1 Salvatore saw Mr. Atherton on that day?

2 THE WITNESS: No.

3 JUDGE LEIBERMAN: Yes, we did not see him?

4 THE WITNESS: Yes, we did not see him.

5 Q Now, on January 21, 1975 you, along with Mr.
6 Salvatore again went to Atherton, is that correct?

7 A Right.

8 Q And on that morning you had occasion to meet with
9 Mr. Atherton in his office --

10 JUDGE LEIBERMAN: Which Atherton?

11 MR. WEINRICH: Richard C. Atherton, the president of
12 Atherton Cadillac.

13 Q Right.

14 Q And also present at that time were members of your
15 shop committee, Mr. McDonald and Mr. Sitler?

16 A Correct.

17 Q Was Mr. Atherton, Richard Atherton Jr. also present
18 at that meeting?

19 A He might have been. He might have but --

20 Q Is it correct that Mr. Salvatore did most of the
21 talking during that meeting?

22 A Correct.

23 Q You were present throughout the meeting however,
24 weren't you?

25 A Correct.

Q Did you take notes?

A No. It was an informal meeting.

Q You don't take memoranda of your bargaining sessions?

A This was an informal meeting, we were just making a plea for the people who were laid off unjustly.

Q Well, you just testified that you were making a plea for the people who were laid off unjustly, is it correct that during that meeting Mr. Salvatore told Mr. Richard Atherton, the president of Atherton, that one of the first things --

JUDGE LEIBERMAN: Why don't you refer to them for clarification as senior and junior?

Atherton Sr. and Jr.

MR. WEINRICH: I will, your Honor, thank you.

Q During the course of that meeting Mr. Salvatore told Mr. Atherton Sr. that one of the first things the union wanted was for the men who had been laid off to be recalled to their job, because there was no justification for this layoff?

A Exactly.

Q And in response to that did Mr. Atherton say that business was bad and the business was suffering losses?

A Yes, he did.

Q And did Mr. Atherton also say that Tony runs my shop, what has to be has to be?

1 JUDGE LEIBERMAN: Tony who?

2 MR. WEINRICH: Dazzo.

3 A Right.

4 Q And at the time in your presence did Mr. Salvatore
5 respond that Mr. Dazzo is creating trouble?

6 A I don't recall if those were the exact words, this
7 is some months ago.

8 Q Well, let me show you General Counsel's Exhibit No. 2
9 marked for the purposes of identification.

10 I call your attention to Page 6 of that statement
11 and ask you to read to yourself the beginning of the
12 9th line and the first paragraph.

13 I believe those were the words, I just want to make
14 sure.

15 Right.

16 JUDGE LEIBERMAN: What were the words again?

17 THE WITNESS: Dazzo is creating trouble in the shop.

18 Q And that's what Mr. Salvatore said to Mr. Atherton?

19 A Right.

20 Q Did Mr. Atherton at the time agree to take back the
21 laid off employees?

22 A No, he did not.

23 Q Now, on January 22nd of 1975 you also met with the
24 workers of Atherton in the unit you represent?

25 A Right.

1 Q In order to discuss contract proposals?

2 A Right.

3 Q And one of the decisions made at that meeting was
4 that the men instructed the union agents as part of the
5 contract proposals to try to get laid off employees
6 recalled, is that correct?

7 A Correct.

8 Q Following that meeting was there a work stoppage at
9 Atherton?

10 A Sometime thereafter there was.

11 Q Was that work stoppage on January 30 or 31st of 1975?

12 A I have the dates here in my pocket --

13 Q What do you have in your pocket, a calendar?

14 A I just jotted some of them down, the dates taken from
15 my calendar at home.

16 Q Will that refresh your recollection as to the dates?

17 A Sure.

18 Q You may look at them.

19 A (Referring) If the 31st was a Monday, it was the
20 Friday before, there was a strike vote taken on the 31st.
21 It was the day before the strike vote when the work
22 stoppage occurred.

23 Q Well, the 31st was a Monday, then it would be the
24 preceding Friday?

25 A Right, that was the day.

1 Q Which would have been January the 28th?

2 JUDGE LEIBERMAN: What year?

3 MR. WEINRICH: 1975.

4 JUDGE LEIBERMAN: What date was a Monday?

5 THE WITNESS: The work stoppage was the 28th and
6 there was a strike vote taken in the shop on the 31st.

7 MR. SCHNIPPER: Excuse me, if I may, January 31st,
8 1975 was a Friday.

9 THE WITNESS: Then it was Thursday and Friday.

10 JUDGE LEIBERMAN: You mean the work stoppage was on
11 January 30th?

12 THE WITNESS: 30th, right.

13 Q Now, you had been advised on January 30th that the
14 reason for that work stoppage was that Mr. Dazzo had
15 threatened to cut the pay of an employee, is that correct?

16 A That and other reasons.

17 Q What were the other reasons?

18 A Well, he had, I had got the call that there was a
19 problem and that there was a work stoppage.

20 Q Who called you?

21 A The president of the union.

22 Q Sam Meyers?

23 A Right. And I contacted the committee at Atherton
24 and they told me that Dazzo told Frank Satava that he
25 would be cut \$50 in his pay --

1 JUDGE LEIBERMAN: Who told you this?

2 THE WITNESS: The committee, Ed Zegilla.

3 Q Had Mr. Zegilla been reinstated at that time?

4 A He was in the shop every single day, even when he
5 was on layoff.

6 JUDGE LEIBERMAN: Why don't you answer counsel's
7 question?

8 A I believe he was still on layoff.

9 Q And he reported that Mr. Dazzo had threatened to
10 cut an employee's pay?

11 A He threatened to cut Frank Satava's pay.

12 Q What else did he report to you?

13 A He said he would cut Satava's pay and he was
14 supposedly turning away work at the door which affected
15 their earnings.

16 He was cutting everyone's pay. And threatened more
17 layoffs, approximately eight more people were to go.

18 Q And it was reported to you that for the reasons
19 you just testified to, the employees had engaged in a
20 work stoppage?

21 A Correct.

22 Q And that was because of Mr. Dazzo's actions on
23 that day?

24 A Correct.

25 Q The duration of the work stoppage was approximately

1 two and a half hours, is that correct?

2 A I met with all of the people after work at four
3 o'clock, it was over -- well, they only started after two,
4 I guess it was two hours or so.

5 Q Did you speak to Mr. Dazzo at that time?

6 A I didn't even get to the shop, no.

7 Q Now, the following day you took a strike vote, is
8 that correct?

9 A Yes, I did.

10 Q And the purpose of that vote was to authorize a
11 strike in case Mr. Dazzo took any future action, is that
12 correct?

13 A No.

14 Q What was the purpose of that strike vote?

15 A You see, our strike fund is from the international
16 unit in Detroit.

17 Now, our contract, the existing 355 contract was to
18 expire March 1.

19 It takes a maximum of 30 days to get strike
20 approval from the union.

21 We have to have a strike vote in a form we have to
22 write down the tally of the strike votes, the shop
23 chairman, location of the shop, and supply that to
24 Detroit, and they in turn send us authorization and we give
25 the men strike checks.

1 Q So is it your testimony that that strike vote
2 had nothing to do with the prior day's work stoppage?

3 A Nothing to do with that at all.

4 Q At the time you distribute strike signs?

5 A I gave strike signs to one individual on his lunch
6 hour, shop chief steward Bob McDonald, outside the
7 building.

8 Q And that was for what purpose that you gave the signs
9 at that time?

10 A This way he would have them in his possession in
11 the car for whatever, he would have the signs.

12 Q Is it your testimony that a sanctioned strike could
13 not take place for a month?

14 A Exactly, until we got authorization from the
15 international -- until sanctioned by the international --

16 Q Which you testified would take approximately a
17 month --

18 A About two, three, four weeks.

19 As long as it takes them to investigate -- they have
20 to approve the strike.

21 Q And on that same day that you took the strike votes,
22 did you also investigate charges that were made against
23 Dazzo that led to the work stoppage on January 30th?

24 A Briefly, yes I did.

25 Q Was that discussed during a strike vote?

1 A No. This was after the vote. I talked to Ernie
2 Barter at lunchtime.

3 JUDGE LEIBERMAN: Who is he?

4 THE WITNESS: A service writer.

5 JUDGE LEIBERMAN: You talked to him about what?

6 THE WITNESS: About Mr. Dazzo turning away work at
7 the door. He takes orders directly from Tony Dazzo on
8 the allocation and writing of work.

9 Q Following that strike vote, do you know the date of
10 your next negotiating session?

11 A February 3rd, we submitted proposals to the company
12 on that day, read over the language and economics of the
13 contract.

14 Q What did your proposals consist of?

15 A More or less an increase of holidays over what they
16 had, vacation, sick leave plan, pension plan, and increased
17 wages.

18 Q Were the proposals written?

19 A Yes, they were in form, correct.

20 Q Do you have a copy of those proposals with you?

21 A No, I do not.

22 Q Do you recall what your first monetary proposal was
23 for a mechanic?

24 A I believe it was \$7.50 an hour.

25 Q What were those mechanics receiving at that time?

1 A \$6, I believe, or something like that.

2 Q How many additional holidays did you ask for?

3 A I don't recall exactly, a couple, I guess.

4 Q How many additional sick days?

5 A One or two, maybe. I don't know. I can't say
6 exactly. I don't have them in front of me.

7 Q At your negotiating session on February the 3rd, 1975
8 was Mr. Zegilla present?

9 A Yes, he was.

10 Q And at the time did Mr. Atherton protest his
11 presence?

12 A Yes, he did.

13 Q Because Mr. Zegilla was still on layoff status at
14 that time?

15 A Right.

16 Q And at that meeting did you again request that the
17 laid off employees be recalled?

18 A That and every other meeting we requested it.

19 Q Now, following this meeting were you present when
20 Mr. McDonald spoke to Mr. Atherton Jr.?

21 A No.

22 Q Were you present when Mr. McDonald said to Mr.
23 Atherton Jr. in response to Mr. Atherton's Jr. question,
24 "The problem is Dazzo. Lighten Dazzo up, he is harassing
25 and threatening the men?"

1 A No.

2 Q Were you not present?

3 A No.

4 Q Did Mr. McDonald report to you that he made such
5 a statement to Mr. Atherton?

6 A Yes, he did.

7 Q And did you advise Mr. McDonald that he should
8 retract that statement?

9 A No, I didn't say nothing either way. He told me
10 what transpired, that's all.

11 Q Did you tell Mr. McDonald that he wasn't
12 authorized to make such a statement to Mr. Atherton?

13 A Well, I assumed he answered voluntarily --

14 JUDGE LEIBERMAN: Can I hear the question, please.

15 (Whereupon the record was read)

16 THE WITNESS: Did I advise him he was not authorized?

17 JUDGE LEIBERMAN: Did you tell him?

18 THE WITNESS: No, I did not.

19 Q At the time that Mr. McDonald reported to you that
20 he made that statement, was Mr. McDonald still a member
21 of the shop committee?

22 A Sure.

23 Q And did Mr. McDonald also tell you that he had made
24 the statement to Mr. Atherton Jr. because Mr. Atherton Jr.
25 had asked some members of the committee why the men were so

1 bitter?

2 A Say it again.

3 Q Did Mr. McDonald report to you that he had made
4 that statement, which you've previously testified to,
5 to Mr. Atherton Jr. in response to a question by Mr.
6 Atherton Jr. --

7 A Yes, Mr. Atherton Jr. solicited the information.

8 Q From the committeemen?

9 A From Bob McDonald and whoever was on the committee
10 with him, yes.

11 Q And he had asked them why the men were so bitter,
12 is that correct?

13 A That is what I understand.

14 Q That's what you were told by Mr. McDonald?

15 A Right.

16 Q When was your next negotiating session following
17 February 3rd?

18 A February 11th.

19 Q And at that time did the union make any provisions
20 in its initial proposal?

21 A I think we were still discussing the contract at
22 that time.

23 At the first proposal meeting we just read it over
24 and gave them copies --

25 JUDGE LEIBERMAN: Mr. Witness, we will save a lot

1 of time if you just remember the question and answer it.

2 Now, the question, as I remember, was did you make
3 any proposals in the --

4 A No, the answer is no.

5 JUDGE LEIBERMAN: No, you did not?

6 THE WITNESS: No.

7 Q Did you advise Mr. Atherton or was Mr. Atherton
8 advised by either yourself or Mr. Salvatore that unless a
9 contract was reached by March the 1st the employees
10 would strike?

11 A I don't believe it was at that meeting.

12 Q Were you present at a negotiating session at which
13 time Mr. Salvatore made the following statement to Mr.
14 Atherton, "Your manager is making things tough, harassing
15 the committee, this is why the men are not being flexible,
16 and why they want the contract terms that have been
17 proposed."

18 A Yes.

19 Q When did that meeting take place?

20 A I guess that was either the second or third
21 negotiation session.

22 I am not sure.

23 Q That was while Mr. Dazzo was still employed by
24 the company, wasn't it?

25 A He was employed up until the 27th, as far as I know.

1 Q As far as you know he was employed up until the
2 27th of February?

3 A Right.

4 Q You're certain it wasn't until February 11th?

5 A No, I'm positive it was the 27th.

6 Q In any event, that statement by Mr. Salvatore was
7 made at the time Mr. Dazzo was still employed?

8 A Right.

9 Q And you heard Mr. Salvatore make that statement?

10 A Right.

11 Q Now, during the same period in which negotiations
12 took place, you continued to meet with the Atherton
13 service employees, is that right?

14 A Right.

15 Q And as the negotiations continued the employees
16 expressed dissatisfaction with the slow progress of
17 negotiations?

18 A Yes.

19 Q They also expressed dissatisfaction with the
20 conditions in the shop?

21 A Right.

22 Q Did they tell you that their dissatisfaction with
23 the conditions in the shop stemmed from their
24 dissatisfaction with Mr. Dazzo?

25 A Yes.

1 Q And did they in fact tell you they can't work
2 with Dazzo?

3 A Yes, someone said that.

4 Q Was that before or was that after, if you recall,
5 Mr. Salvatore told Mr. Atherton that Dazzo was making
6 things tough and harassing the committee and that's why
7 the men ~~were~~ being so inflexible?

8 A It was eight days after. That was on a meeting we
9 had at the Bay Shore Motel.

10 Q And according to your recollection, when did that
11 take place, the meeting at the Bay Shore Motel?

12 A The 19th, that's when Ernie Barta informed us he was
13 getting the service manager job.

14 Q And is it your recollection that Mr. Dazzo was still
15 employed on February 19th?

16 A Yes, sure he was.

17 Q Now, there came a time when Mr. Dazzo was terminated,
18 is that correct?

19 A Right.

20 Q Had Mr. Zegilla been reinstated at this point or
21 had he been reinstated after Dazzo's termination?

22 A He might have been reinstated, I really don't recall,
23 I think he was. I am not sure.

24 Q And following Mr. Dazzo's termination you had another
25 meeting with the employees at the Bay Shore Motel, didn't you?

1 A Right.

58

2 Q And at that time you were instructed by the
3 employees that the biggest problem, Dazzo, is gone, so
4 try and wrap up the negotiations, is that correct?

5 A Right.

6 Q And at that time it was decided that you would
7 negotiate past the strike deadline and modify some of
8 your demands?

9 A We were to go on strike on March 1, but when they heard
10 Tony was going they modified their demands and they said
11 to go back in there and reason with them.

12 Then we went back and they authorized us to
13 negotiate as of the 1st of March.

14 Q And thereafter you modified your demands and reached
15 an agreement on March 3rd?

16 A Right.

17 Q Had your demands been modified at all prior to Mr.
18 Dazzo's termination?

19 A Yes.

20 Q In what respect?

21 A A little bit in the way, just in classification,
22 laying out classifications as to who are polishers,
23 who are utility men, who were this and who were that.

24 Q Were the monetary demands revised by the way of
25 dollars and cents?

1 A Very little. As a matter of fact, the ultimate
2 settlement wasn't too far over our demands.

3 We demanded \$7.50, but we wound up with \$7.11 over
4 the cost of the contract and 40 cents increment.

5 Q Well, exactly what demands were modified after Mr.
6 Lazzo's termination?

7 A Some of the incentive steps for polishers were
8 modified, a little bit of money for the aid mechanics
9 were modified.

10 JUDGE LEIBERMAN: You mean downwards?

11 THE WITNESS: Right.

12 JUDGE LEIBERMAN: You mean both were modified downwards?

13 THE WITNESS: Right, I think we had asked for \$3
14 for each car that was polished and we settled for \$1.

15 It is all in the course of normal bargaining.

16 You start out high and end up somewhere in the middle.

17 JUDGE LEIBERMAN: I just want to know what the
18 demands are modified downwards.

19 The incentive system is modified downwards?

20 A The incentive system for polishers.

21 JUDGE LEIBERMAN: And you said something about wages?

22 THE WITNESS: The wage rates we asked for were
23 raised in some instances.

24 JUDGE LEIBERMAN: What else?

25 A I believe we got the whole medical plan we asked for,

1 and the pension.

2 I don't think anything else, maybe a holiday or two,
3 something like that. I am not sure, possibly a holiday.

4 We got most everything we asked for in the contract.

5 Q At which point in the negotiations, if you remember,
6 was Ed Zegilla put back to work?

7 Does your calendar refresh your recollection as to
8 that?

9 A This isn't my calendar, this is --

10 Q Does the notes refer to it?

11 A No. He was put back to work, I guess, towards the
12 end of the settlement?

13 Q Is that before or after Mr. Dazzo was terminated?

14 A I believe he was put back before, I'm not sure
15 exactly.

16 He might have been put back before the 27th,
17 that's when Tony was fired.

18 MR. WEINRICH: I have no further questions of the
19 witness.

20 CROSS EXAMINATION

21 Q (By Mr. Schnipper) Mr. Elliot, you were present
22 at all of the negotiating sessions, is that correct?

23 A Right.

24 Q During the negotiating sessions or at any time did
25 you or Lou Salvatore ever demand that the employer

1 discharge Anthony Dazzo?

2 A No, we did not.

3 Q Did you ever condition the signing of a contract
4 on Mr. Dazzo's discharge?

5 A No.

6 Q You testified that Mr. Atherton Sr. said that Tony
7 runs his shop.

8 Does that mean that he has full run of the working
9 conditions, workloads and other matters?

10 A He ran the shop in total.

11 Q Did you have any idea, what were business
12 conditions like at the time that the pre-election layoffs
13 occurred?

14 A Very very good.

15 MR. WEINRICH: Objection. I move to strike.

16 The witness obviously is not qualified to testify --

17 THE WITNESS: I am --

18 JUDGE LEIBERMAN: Just a moment, Mr. Witness.

19 During these arguments please don't say anything.

20 The witness' remarks will be stricken.

21 MR. WEINRICH: The witness has not been qualified
22 to testify as to the company's economic situation
23 other than what she's been told and if it's offered for
24 the truth of the matters asserted therein I would think
25 it would be admissible.

1 MR. SCHNIPPER: I withdraw the question.

2 Q Do the mechanics get a guarantee per week, if you
3 know?

4 A Yes, they do.

5 Q Do you know what their guarantee was?

6 A At the time the guarantee was \$185 a week.

7 Q If you know, specifically was Zegilla making more
8 than his guarantee?

9 A Yes, I had seen his pay stub, because we had given
10 him a day off to go to the labor board which we had to
11 reimburse him for, and the stub for the 40 hours, for
12 the week before was \$714 he grossed.

13 Q He was making considerably more than his guarantee?

14 A He tripled his guarantee.

15 Q What does that mean, if you know?

16 A In a shop if you go under the guarantee for X amount
17 of time and that generally means the shop is slow, and
18 you'll probably be paid off.

19 But if everyone is making above guarantee, for every
20 dollar the employee makes the house makes two dollars
21 so if he made 700 dollars Atherton made 1400 dollars.

22 Q So would you conclude that business was good at
23 that time?

24 A Very good.

25 JUDGE LEIBERMAN: Counsel, how is that material to

1 this proceeding?

2 We're not here trying the justification for the
3 layoffs, are we?

4 What is material perhaps is that there were layoffs
5 but the reason -- unless you can tell me how the reason
6 for the layoffs is material, business conditions -- do
7 you agree, Counselor?

8 MR. WEINRICH: I agree, your Honor.

9 Q At the time the layoffs were made, were they made
10 by Mr. Dazzo?

11 JUDGE LEIBERMAN: That could be material.

12 Q (Continuing) Were they made by Mr. Dazzo?

13 A Yes, he did all the layoffs.

14 Q Did Mr. Atherton authorize the layoffs?

15 A I wouldn't know. Not to my knowledge.

16 Q So if business was good and there were layoffs and
17 Mr. Atherton did not authorize a layoff his business
18 could be hurt by these layoffs, is that correct?

19 A Sure, he had to lose money.

20 Q Now, you testified about --

21 JUDGE LEIBERMAN: Let me inform you, Counsel, that
22 I make no findings based on legal questions put to your
23 own witness.

24 Now, this witness is in a position, technically,
25 where he's being cross-examined. Actually he is not being

1 cross-examined. You are treating him as though he
2 were your witness on direct.

3 Q There was testimony about the work stoppage.

4 You found out about the work stoppage, when?

5 A I was called at my house at around 2:30, 3 o'clock
6 that there was trouble in the shop.

7 Q Did you know anything about the stoppage before?

8 A No.

9 Q When had you decided to take a strike vote?

10 A I had already had the blank cards and stuff in the
11 car from the following Friday.

12 I got all the forms to send to the international
13 union and everything.

14 Q And could you tell us again why did you have to call,
15 have a strike vote?

16 A All strikes that any local in the U.A.W. has to
17 be sanctioned by the international union.

18 They provide strike benefits, issue checks that
19 come from Detroit. We cannot sign or authorize without
20 their approval.

21 Q And those checks would be for what?

22 A Strike benefits in case of a strike.

23 Q When did you decide on a date for the strike vote --
24 when did you decide on the date for the proposed strike?

25 A Well, we figured when the 355 impass ran out that

1 we would strike if need be.

2 Q The 355 was the local that was --

3 A Amalgamated Local 355.

4 Q When you went to the shop what did you find it
5 about these slowdowns?

6 A Well, I had never made it to the shop that night,
7 that very night, because I met them coming out of work
8 and we sat down at the diner, and then they told me that
9 work was being turned away at the door.

10 Bobby McDonald had talked to the service writers,
11 and then the following day I myself talked to the service
12 writers and they told me they were authorized by Mr. Dazzo
13 not to write any work after 10 o'clock a.m. in the morning,
14 which left mechanics sitting on the bench after work doing
15 nothing.

16 Q So you're telling me that even though there was
17 work to be done in the shop it was being turned away.

18 MR. WEINRICH: Objection.

19 JUDGE LEIBERMAN: Sustained.

20 Q What did the service writer tell you about the
21 amount of work that could be performed in the shop,
22 if anything?

23 A Even while mechanics were standing there customers
24 came up for tuneups and that kind of thing and the
25 service manager said they were booked solid.

1 Q Were they booked solid?

2 A No.

3 JUDGE LEIBERMAN: A service writer told you there
4 was room in the shop for work and the mechanics were
5 sitting on the bench?

6 THE WITNESS: Right.

7 JUDGE LEIBERMAN: Are you offering this as the
8 proof, as what the service writer told this man?

9 MR. SCHNIPPER: At this moment I am only offering it
10 as the conversation that he had with the service writer.

11 Q On January 22nd, I believe, you had a meeting at
12 the Bay Shore Motel to formulate contract proposals?

13 A Right.

14 Q How did you arrive at the monetary proposal?

15 A Well, how we draw proposals, in general, is we
16 have a form language outline, and then we take
17 suggestions from the floor from each classification, like
18 mechanics, like they were getting \$6, so we take proposals.

19 Guys would say \$8, \$9 all kinds of crazy figures
20 until we come out with something rational as a bargaining
21 figure to start with.

22 It's all done from the floor.

23 Q So the men set the original rates?

24 A Right.

25 Q Were the people who wer- on layoff present?

1 A Yes, they were.

2 Q What was the tone of the meeting?

3 JUDGE LEIBERMAN: Do you understand that question?

4 A Right.

5 The people were very very upset because the leaders
6 of the shop and all of their friends were at the meeting
7 and those who were laid off, Zegilla who was laid off,
8 Guzzi, Bath who was suspended, and they were more or
9 less long term employees except for Ed Zegilla of the
10 shop.

11 People were very upset, they were laid off and
12 they wanted to know what the union was going to do about
13 it.

14 They were going to take Atherton on about it.

15 Q What did they propose?

16 A The first thing they said they wanted, the first
17 demand was to be that the laid off people, come back to
18 work.

19 Q What else?

20 A And the monetary, the moneys.

21 Q Did they ask you anything else?

22 A I don't recall.

23 Q Did anybody say anything to you about Dazzo at
24 that meeting?

25 A I think there probably was a lot said about him.

1 Nothing direct. He had not a friend in the room, I'm
2 sure.

3 JUDGE LEIBERMAN: Mr. Witness, if you take your
4 hands away from your face I think we can hear you better.

5 THE WITNESS: Yes.

6 Q Did they ask you what could be done?

7 Did they ask you to do anything?

8 A They might have. Like I say, everybody was calling
9 him most every name under the sun, for the layoff, and
10 the exact words of the meeting, I don't recall.

11 But it was a hot and heavy meeting, you can be sure.

12 Q Did they ask you to bring up Dazzo's status in
13 negotiations?

14 A No. No, I don't recall. I don't recall.

15 Possibly, I don't recall.

16 Q On the day you took the strike vote you gave some
17 strike signs to someone?

18 A Right.

19 Q Who did you give them to?

20 A Well, I took the vote in the morning and I gave
21 them to Bob McDonald at lunchtime.

22 I came back at lunchtime when I was going out
23 and I put my car next to his in the lot and I took them
24 from mine and put them in his.

25 Q The strike signs you say were transferred from car

1 trunk to car trunk?

2 A Right.

3 Q Do you know what happened to those strike signs?

4 A They're probably still -- he probably still has
5 them to this day, I guess.

6 MR. WEINRICH: Objection, speculative.

7 JUDGE LEIBERMAN: Sustained.

8 The answer will be stricken.

9 Q Have you ever seen the strike signs since they were
10 put into the car?

11 A No.

12 Q You told us there was a negotiating session at
13 which Mr. Dazzo, which you were told that Mr. Dazzo was
14 going to be discharged.

15 Will you tell us what happened?

16 MR. WEINRICH: Objection, I recall no testimony.

17 JUDGE LEIBERMAN: No testimony.

18 Why don't you put a question to him?

19 Q On February 27th I believe you were told that
20 Mr. Dazzo was going to be discharged, is that correct?

21 JUDGE LEIBERMAN: Counsel, for your benefit,
22 it would be best if you didn't lead.

23 MR. SCHNIPPER: I'm sorry, I keep forgetting I'm
24 on cross-examination.

25 Q On what date was Mr. Dazzo discharged?

1 A He was discharged on the 27th of February.

2 JUDGE LEIBERMAN: 27th?

3 THE WITNESS: 27th.

4 Q What happened on that day?

5 A We were inwith the company's bargaining committee,
6 present were myself, Ed Zegilla, Lou Salvatore, Walter
7 Sitler, and Mr. Atherton Sr., and his attorney Stone.

8 The major problems we had at that time were Walter
9 Sitler, who at the time was a B partsman, we demanded
10 that he become an A partsman.

11 There was a question of some 50 or 60 dollars a
12 week difference in wages.

13 We demanded they get paid on the 1970 book instead
14 of the 1975 book.

15 And there were also a few small other money issues
16 and we were going at them, talking back and forth
17 with the company.

18 Some things we were able to straighten out, some
19 things we were not.

20 And we still had the magic \$7 figure on the table
21 for the mechanics and we just about ~~reached~~ another
22 impasse.

23 The company then asked us if we would leave the
24 room, the whole committee, so we did. Myself, Lou
25 Salvatore, McDonald and Zegilla and Sitler, we went out

1 into the sales floor right outside, looking at the
2 Cadillacs out there for maybe 20 minutes, 25 minutes.

3 Later they called us back in and Atherton said
4 we have been investigating --

5 JUDGE LEIBERMAN: Senior or Junior?

6 A Senior -- we had been investigating what Junior
7 has been telling us about Tony doing, turning away work
8 and the problems that are created in the shop and we have
9 decided that we are going to let him go.

10 Q What was the response?

11 A Well, there was silence. Nobody really knew what
12 to say, I guess.

13 Q What happened after that?

14 A Well, Lou told him, if that's your decision, he
15 goes. It's your decision to do what you want with Tony
16 but we still have the problem of the contract.

17 So the company said, "I wish you would get back
18 with your people and talk to them and see if we can
19 straighten a few differences out."

20 So we had a meeting set up for that night in any
21 case at the Bay Shore Motel to give a report on the
22 progress of the negotiations up to that point anyhow,
23 so when we met with the people at 5 o'clock and we told
24 them what transpired they were thrilled to death when
25 they heard that Tony got the axe.

1 Q What happened at that meeting?

2 A Well, they said to us, listen it seems like the
3 company's not going to be fighting us or beating us over
4 the head.

5 Let's see if we can wrap up the contract.

6 They asked us what things were still outstanding
7 and we said we had Walter Sitler's money, we had the
8 70 book and the figure for the A mechanics, or whatever
9 the figure was.

10 I didn't have time to type out the new proposals.
11 I had to do it in longhand with three copies of it and
12 present the new proposals of the contract to the company
13 on the next negotiating day, which was March 3.

14 MR. SCHNIPPER: I have no further questions.

15 REDIRECT EXAMINATION

16 Q (By Mr. Weinrich) Mr. Elliot, you testified
17 to a meeting at which time you were advised by Mr. Stone
18 that Mr. Dazzo would be terminated?

19 A Right.

20 Q How long after Mr. Salvatore made the statement
21 to Mr. Atherton that your service manager is making things
22 tough, harassing the committee, this is why the men are
23 not being flexible and why they want the contract terms
24 that had been proposed?

25 How long was it after that statement was made that

1 the meeting was held in which you had been advised
2 that Mr. Dazzo would be let go?

3 A I would say 16 days, maybe.

4 Two or three weeks I guess. Two and a half weeks.

5 Q Was that meeting prior to your certification?

6 JUDGE LEIBERMAN: Which meeting?

7 Q The meeting in which Mr. Salvatore made the
8 statement?

9 A No, this was on the negotiation meeting of either
10 the 3rd or 11th when that statement was made.

11 There was negotiation on February 3rd and 11th.
12 And the statement that Lou Salvatore made, I believe, was
13 on February 11th.

14 The date Dazzo was fired was the 27th of February.

15 Q And is it your testimony that on the meeting which
16 took place on the 27th of February Mr. Stone just
17 stopped the meeting for a minute?

18 A Right.

19 Q He went outside and came back and said Dazzo's --

20 MR. SCHNIPPER: Objection. I don't believe that
21 was the testimony.

22 MR. WEINRICH: I'll withdraw my question.

23 Q Is it your testimony that during the meeting on
24 the 27th that Mr. Stone just stood up, asked you to
25 leave the room and when you returned said that Mr. Dazzo

1 is being terminated?

2 A Exactly, right.

3 JUDGE LEIBERMAN: You're saying, yes.

4 THE WITNESS: Yes.

5 Q There was no discussion about Mr. Dazzo at that
6 meeting prior to that time?

7 A No, at that particular meeting, no. Not that I
8 recall.

9 Q , you have also testified to the fact that
10 during the course of the negotiations the men were very
11 upset concerning the layoffs, very upset concerning the
12 fact that work wasn't coming into the shop, it was being
13 turned away.

14 That the tone of these meetings was just that
15 everybody was very upset.

16 Now, it was Mr. Dazzo that laid off the employees,
17 is that correct?

18 JUDGE LEIBERMAN: Say that again.

19 Q Is it Mr. Dazzo that laid off the employees?

20 A Mr. Dazzo was the one who told them they were laid
21 off, yes.

22 Q And it was Mr. Dazzo who turned away work?

23 A That is what I was told.

24 Q At those meetings the employees were very upset at
25 Mr. Dazzo, were they not?

1 A Yes, they were.

2 Q Is it your testimony that they made no demands
3 upon the union at these meetings concerning Mr. Dazzo's
4 continued employment?

5 A Nobody made any demands upon me, not on me myself,
6 that I know of, nor anybody that I know at that meeting.

7 No demands, Tony had to go, they all wanted him
8 to go.

9 Nobody said as a contract proposal Tony had to go.

10 JUDGE LEIBERMAN: How do you know the men wanted
11 Dazzo to go?

12 THE WITNESS: Well, the language they used when
13 they told me the stuff that Tony had done, the no good
14 this and that, they loved him.

15 Q And after Mr. Dazzo was gone the employees stated
16 that their biggest problem is now gone?

17 A Right.

18 MR. WEINRICH: I have nothing further.

19 RECROSS EXAMINATION

20 Q (By Mr. Schnipper) Just one question, Mr.
21 Elliot.

22 The statement that Mr. Salvatore made at the
23 earlier negotiating session concerning Dazzo, you reported
24 there was a conversation that McDonald reported to you.

25 Did that come after Mr. Salvatore made that statement?

1 A Repeat it again, please.

2 Q You told us McDonald told you that he had a
3 conversation with Atherton Jr.?

4 A Right.

5 Q Did that conversation with Atherton Jr. come after
6 Mr. Salvatore had said something --

7 A Yes, he did.

8 Q And it came before Mr. Dazzo was fired?

9 A Right.

10 Q Do you know where that conversation took place?

11 A I was told it took place right in the shop.

12 Q And who had sought out whom, if you know?

13 A Richard Atherton Jr. came to the committee and
14 asked them what the problem was.

15 JUDGE LEIBERMAN: That's what was reported to you?

16 THE WITNESS: Right.

17 JUDGE LEIBERMAN: Are you offering this for the
18 truth?

19 MR. SCHNIPPER: No, just for the report of the
20 conversation.

21 No further questions.

22 REDIRECT EXAMINATION

23 Q (By Mr. Weinrich) Is it your testimony that the
24 McDonald incident occurred before Mr. Salvatore made
25 his statement to Mr. Atherton --

1 MR.SCHNIPPER: I object, he testified it took
2 place between Mr. Salvatore's statement and at the time --

3 JUDGE LEIBERMAN: Counsel can probe this.

4 Your objection is overruled.

5 MR. SCHNIPPER: Well, your Honor, he is trying to
6 restate the testimony, and that is not the testimony.

7 JUDGE LEIBERMAN: He's asking whether it is the
8 testimony.

9 MR. WEINRICH: Let me withdraw that.

10 Q Which statement came first, the McDonald statement
11 or the Salvatore statement?

12 A The Salvatore statement, the McDonald statement,
13 then the discharge statement.

14 Q I show you General Counsel's Exhibit 2 marked for
15 identification.

16 I refer your attention to Page 8 and ask you to read
17 to yourself through the second -- the first full paragraph
18 appearing on that page.

19 A This is not the same day. She does not have it
20 dated.

21 JUDGE LEIBERMAN: There is no question before you,
22 Mr. Witness.

23 Q Now, do you recall when McDonald made his statement
24 to you?

25 A Not the exact day, no. Not exactly, it was not

78

1 February 3rd.

2 Q Was it within a few days after the February 3rd
3 meeting?

4 A No, as a matter of fact I believe there was more
5 than one conversation with Mr. Richard Atherton Jr.

6 Q Did you ever make the statement that you recall
7 that sometimes within a few days after this meeting,
8 referring to the February 3rd meeting McDonald said to
9 Atherton's son, the problem is Dazzo, lighten Dazzo up,
10 he's harassing, threatening the men?

11 A Yes, sometime thereafter the 3rd, a few days,
12 whatever, yes.

13 Q You made that statement, it occurred within the few
14 days after the 3rd?

15 A Yes.

16 Q That appears in your sworn statement?

17 A Right.

18 Q Now, I show you Page 9 of General Counsel's Exhibit 2
19 marked for identification and refer your attention to the
20 second full paragraph appearing on that page and ask
21 you to read it to yourself.

22 A Right.

23 Q Now, I ask you if Mr. Salvatore's statement to
24 Mr. Atherton is that your manager is making things tough,
25 harassing the committee, et cetera, occurred before or

1 after Mr McDonald reported his statement to Mr.
2 Atherton Jr. to you.

3 A It was Salvatore's statement, then you had
4 McDonald's statement, it says on or about February 19.

5 JUDGE LEIBERMAN: Well, I think counsel wants to
6 know the sequence --

7 MR. WEINRICH: That's right.

8 A The sequence was the same as I testified the
9 first time.

10 JUDGE LEIBERMAN: What was that?

11 THE WITNESS: In that you had Salvatore's statement
12 to the company, Richie Atherton went out and checked it
13 out with the committee people.

14 JUDGE LEIBERMAN: And then spoke to Mr. McDonald
15 and then Mr. McDonald reported back to you?

16 THE WITNESS: Right.

17 Q Now, in general counsel's Exhibit 2 marked for
18 identification, which I just showed you, do you in
19 that statement say that Mr. Salvatore's statement was
20 made on or about February 20th?

21 A When I made this statement, I did say exactly it.
22 I have no book in front of me with dates --

23 JUDGE LEIBERMAN: You are referring to the
24 affidavit?

25 THE WITNESS: Right, this was taken in a motel room

1 but I have nothing with me. I didn't say exactly
2 February 19th, I said on or about.

3 Q Did you say on or about February 20th?

4 A That was the day of the negotiations, the 19th
5 was one of the days of the negotiations.

6 Q But it is now your testimony that Mr. Salvatore's
7 statement preceded Mr. McDonald's?

8 A The investigation and discharge, right.
9 For the third time, right.

10 MR. WEINRICH: I have no further questions.

11 MR. SCHNIPPER: I have no further questions.

12 JUDGE LEIBERMAN: You may step down, thank you.

13 Off the record for a five minute recess.

14 (Whereupon a short recess was taken)

15 JUDGE LEIBERMAN: The trial will continue.

16 MR. WEINRICH: General counsel calls as its next
17 witness Mr. Anthony Dazzo.

18 Whereupon,

19 ANTHONY DAZZO

20 was called as a witness and, having been first duly sworn
21 by Judge Leiberman, was examined and testified as follows:

22 DIRECT EXAMINATION

23 Q (By Mr. Weinrich) Mr. Dazzo, would you state
24 your full name and address for the record, please.

25 A Anthony Dazzo, 190 Thunder Road, Holbrook, New York.

1 Q Mr. Dazzo, did there come a time when you
2 started working for Atherton Cadillac?

3 A Yes.

4 Q When were you first hired by Atherton?

5 A The spring of '65.

6 Q And at the time in what capacity were you hired?

7 A As a mechanic.

8 Q Did there come a time when you received a promotion?

9 A Yes, I received a promotion in about 1967.

10 Q To what position were you promoted to at that time?

11 A New car service manager.

12 Q And for how long did you serve as a new car service
13 manager?

14 A Until about 1969.

15 Q And did you receive a promotion at that time?

16 A Yes, sir.

17 Q To what position?

18 A To night service manager.

19 Q And until when did you continue in the employ of
20 Atherton as a night service manager?

21 A Until about 1971, '72, late '71 or early '72.

22 Q Did you receive a promotion at that time?

23 A Yes.

24 Q To what position?

25 A General service manager.

1 Q And until when did you continue in the employ
2 of the company as general service manager?

3 A Until February of this year, 1975.

4 Q Were you terminated at that time?

5 A Yes.

6 Q On what date?

7 A February 11, 1975.

8 Q What day of the week was that?

9 A Tuesday.

10 Q As general service manager of Atherton Cadillac,
11 to whom did you report?

12 A To Mr. Atherton Sr.

13 Q And what was his position with the company?

14 A President of the company.

15 Q How many people worked in the service department
16 at the time you became general service manager?

17 A About 34, 35 people.

18 Q And in what -- what type of employees, what type of
19 jobs did these employees perform?

20 A From mechanics, polishers, B mechanics, service
21 writers, and porters.

22 Q What were your responsibilities and duties with
23 reference to these employees?

24 A My responsibilities were to make sure that the
25 work was going out.

1 To schedule work to make sure it went through
2 the shop correctly, make sure it was quality control,
3 make sure everyone was busy, adjust grievances, listening
4 to any complaints they might have, purchasing supplies
5 and things.

6 Q Who hired the service department employees?

7 A I did.

8 Q Who fired the service department employees?

9 A I did.

10 Q Did you ever have occasion to discipline any of the
11 service department employees?

12 A Yes.

13 Q What form did this discipline take?

14 A From letters of reprimand in their personal file to
15 discharge or suspension.

16 Q Who prepared the letters of reprimand?

17 A I dictated them and my secretary typed them up.

18 Q Who signed the letters of reprimand?

19 A I did.

20 Q Were employees in the service department ever
21 promoted from one classification to another?

22 A On occasion, yes.

23 Q Who granted such promotions?

24 A I would.

25 Q Did employees in the service department ever receive

1 increases in wages?

2 A Yes.

3 Q Who would grant such wage increases?

4 A I would propose them to Mr. Atherton Sr. and we
5 would discuss it and generally it would be given -- he
6 would override it, of course, if that was his decision.

7 Q Do you recall any instances in which he failed to
8 follow your recommendation?

9 A I know of a couple of instances, yes.

10 Q Could you tell us how many?

11 A It was about two polishers and one, I think,
12 concerned Frank Satava at one point.

13 Q You recommended him for an increase?

14 A Yes.

15 Q On how many occasions did he follow your
16 recommendations concerning the granting of wage increase?

17 A I can't recall.

18 Q Was it more than two?

19 A Yes, it was more than two.

20 MR. SCHNIPPER: I object to this on the grounds
21 of relevance.

22 JUDGE LEIBERMAN: I'll ask counsel to state the
23 relevance.

24 MR. WEINRICH: Well, your Honor, it is contended
25 as part of general counsel's case that Mr. Dazzo was a

1 supervisor --

85

2 JUDGE LEIBERMAN: I think that will not be denied.
3 You will concede --

4 MR. SCHNIPPER: The allegation is that he's the
5 person responsible for handling grievances, not that he's
6 a supervisor, and if he's a supervisor it still has no
7 bearing on whether he's empowered specifically to handle
8 grievances.

9 Grievances was not in the collective bargaining
10 unit.

11 MR. WEINRICH: Well, in part it is general counsel's
12 position based on base law that one who fits the
13 statutory definition of a supervisor is by that position
14 a potential grievance adjuster and falls within the A
15 B one definition.

16 So I think that it is essential to general counsel's
17 case to establish that Mr. Dazzo is a supervisor.

18 JUDGE LEIBERMAN: I think you made your point on
19 the supervisory matter.

20 MR. WEINRICH: All involved to other matters, your
21 Honor --

22 JUDGE LEIBERMAN: Subject if there is counter valid
23 evidence, of course, you may have to come back to this.

24 Q During the period of time that you served as
25 general service manager, were the employees within the

1 service shop represented by any collective bargaining
2 representative?

3 A Yes.

4 Q Initially when you became service manager, which
5 collective bargaining, which labor organization
6 represented these employees?

7 A Local 355.

8 Q As general service manager, did you have occasion to
9 have dealings with representatives of Local 355?

10 A Yes, I did.

11 Q If you recall, will you describe to the court the
12 nature of these dealings?

13 A Most of the time the dealings were centered around
14 who was getting jobs and the shop stewards would come in
15 and carry one man's grievances, that one man was getting
16 a better job than he was.

17 And in this case the shop steward would call the union
18 delegate.

19 The delegate, myself and the shop steward and the
20 aggrieved man would meet in my office and try to iron
21 the problem out.

22 Q Who was the union delegate that you dealt with?

23 A The union delegate was a gentleman by the name of Bill
24 Pasiglia.

25 Q And do you recall any specific service shop employee

1 who complained about the assignment of work at which
2 time you had to meet with Mr. Pasiglia?

3 A A mechanic by the name of Richard Brown.

4 Q What action if any did you take in reponse to these
5 complaints?

6 A Well, the first time we took Frank Satava out of
7 the --

8 JUDGE LEIBERMAN: You took who?

9 THE WITNESS: Frank Satava.

10 JUDGE LEIBERMAN: This is somebody else now?

11 THE WITNESS: This is the man who would distribute
12 the work, and we changed him with a new employee, a man
13 named Herman and we put him in the tower.

14 Things ran smoothly for a while and then somebody
15 else would have a complaint.

16 Q What was Mr. Brown's complaint?

17 A That he was not getting his fair share of the work.

18 Q And who specifically assigned the service work?

19 A At the time it was Frank Satava.

20 Q And whose decision was it to remove Mr. Satava?

21 A It was my decision, agreed upon by the shop steward
22 at that time and the delegate from the union.

23 Q And in what period of time did this take place?

24 A How long --

25 Q When?

1 A Oh, I think it was in 1972, probably April or
2 May of 1972.

3 Q Did you have recurring complaints of this nature?

4 A Yes.

5 Q Did you have another occasion -- did you meet with
6 union representatives concerning these complaints?

7 A Yes.

8 Q Now, you testified that as general service manager
9 you had occasion to discharge employees, when an employee
10 was discharged, did you have an occasion to meet with
11 representatives of Local 365?

12 A I would notify the shop steward and we would send a
13 letter to Local 355, yes, outlining why he was discharged
14 and most of the time they had to get back to me by
15 telephone.

16 I recall maybe on one or two occasions in person.

17 Q When you say they would get back to you by telephone
18 or one or two occasions in person, what was the nature
19 of their return call or visit?

20 A They would verify that they received all the
21 documents and why in fact the man was discharged.

22 Q Do you recall any occasion where the union
23 protested the discharge of any employee?

24 A Yes, there was an employee, Bill Nager, who was on
25 the night shift, who was discharged before, who we

1 discharged because he was low man on seniority on
2 the night shift.

3 But there was a man that had less seniority than
4 him on the day shift, so he protested that --

5 JUDGE LEIBERMAN: Who protested that?

6 THE WITNESS: Mr. Nager and a person from the union.

7 Q Who from the union?

8 A Pasiglia.

9 Q Did you have occasion to meet with Mr. Pasiglia?

10 A Yes.

11 JUDGE LEIBERMAN: What was discussed at this meeting?

12 THE WITNESS: The fact that Mr. Nager had more
13 seniority and couldn't be laid off before the man who had
14 less seniority than him.

15 Q Did you take any action in response to this
16 discussion?

17 A Yes, we put Mr. Nager back to work in the daytime,
18 we took him off the night and put him on the daytime
19 side.

20 Mr. Nager had complained to the National Labor
21 Relations Board, the union intervened and Mr. Nager
22 agreed to leave with a cash settlement.

23 Q What was your role in these discussions?

24 A We were discussing what cash settlement Mr. Nager
25 would receive and we came to an agreement.

1 Q Who did you enter into these discussions with?

2 A Mr. Pasiglia.

3 Q Were you the one that reached the agreement with
4 Mr. Pasiglia?

5 A Yes.

6 Q As general service manager, you have occasion to
7 participate in any sort of hearing or other governmental
8 inquiries concerning employees?

9 A Yes, sir.

10 Q Of what nature, through which governmental agency?

11 A New York State Unemployment Division.

12 Q And in what capacity did you appear?

13 A As general service manager.

14 Q At the time you became general service manager, did
15 the company have any written work rules that the mechanics
16 operated under?

17 A No, sir.

18 Q Did there come a time when such work rules were
19 formulated or written?

20 A Yes.

21 Q Who prepared these work rules?

22 A I did.

23 Q Did you have occasion to discuss these work rules
24 with anyone?

25 A Yes, myself and Mr. Pasiglia will have to give them

1 to Mr. McDonald and Mr. Pasiglia to make sure the
2 union will go along with them.

3 So then finally we narrowed them down and the
4 union agreed they were fair and we typed them up and
5 stuck them on the bulletin board.

6 Q During your period of employment as general service
7 manager, did there come a time when Local 259 began to
8 organize at the Atherton service shop?

9 A Yes.

10 Q When did this take place, if you recall?

11 A Sometime in November of 1974.

12 Q How did you learn of this organizational activity?

13 A Through some of the men discussing it, discussing
14 the policies.

15 Q Well, from whom did you learn of the activity?

16 A From McDonald, maybe Bath.

17 Q Did you observe any organizational activity take
18 place in the company premises?

19 A Initially, no. A couple of weeks afterwards, yes.
20 I observed two men from the union talking to Zegilla and
21 McDonald.

22 Q Are the two men that you observed present in the
23 room?

24 A Yes.

25 Q One of them is?

1 A Yes.

2 Q Will you point to that man?

3 A Mr. Salvatore (indicating).

4 Q Is that the man sitting next to Mr. Schnipper?

5 A Yes, it is.

6 Q Do you know who the other man was, the name of the
7 other man?

8 A Steven Elliot.

9 Q Is that the man who testified here today?

10 A Yes.

11 Q When did you first see them on the premises?

12 A Around the end of November.

13 Q What were they doing, if you observed what they
14 were doing?

15 A Talking with a couple of the mechanics.

16 Q Did you have occasion to see if anything was
17 distributed within the service area?

18 MR. SCHNIPPER: I object to this all, sir, I don't
19 see any relevance to this line of questioning.

20 JUDGE LEIBERMAN: Counsel, state your relevance.

21 MR. WEINRICH: Well, your Honor, as part of general
22 counsel's case and as background for that case, I think
23 that it is relevant to develop the area that Mr. Dazzo
24 observed union activity, reported that union activity
25 to his superiors, took action based upon those reports,

1 and later engaged in conversations with the union
2 representatives in order to establish the motive for
3 what we alleged to be the union's actions towards the
4 report with respect to Mr. Dazzo.

5 JUDGE LEIBERMAN: Overruled.

6 A Yes, I did.

7 They had distributed envelopes prior to the
8 beginning of November, late in October.

9 Q Did you have occasion to report your observations
10 concerning the local 259 organizational activity to
11 any other representative of Atherton management?

12 A Just Mr. Atherton Sr.

13 Q When did you make this report to Mr. Atherton Sr.?

14 A Well, the first time when I saw the pamphlets with
15 Local 259, was in the later part of October, to the best
16 of my recollection and I told them about it.

17 Q What did you say to him at that time?

18 A I told him that somebody -- I didn't see anybody
19 at the time but I told him that somebody from 259 was
20 obviously in the shop and distributed their leaflets
21 with their propaganda on it.

22 He said, all right. Just, you know, keep your eyes
23 open, which I did.

24 Q Did you make any subsequent report?

25 MR. SCHNIPPER: I would object to that answer,

1 the question was about who did he see distribute
2 literature, the witness said he didn't observe anybody
3 at that point, in October he said he saw some literature.

4 I'd like to strike the answer and just have him
5 answer the question of who he observed.

6 JUDGE LEIBERMAN: You're objecting on the grounds
7 or moving to strike on the grounds that the answer is
8 not responsive.

9 Well, I think the objection should be by the
10 person who propounds the question.

11 If he's satisfied with the answer, it's reasonable.
12 Your motion is denied.

13 MR. WEINRICH: Can I have my last question read back?

14 (Whereupon the pending question was read)

15 Q Did you make any subsequent reports to Mr. Atherton
16 Sr. concerning what you observed in the shop?

17 A After the end of October?

18 Q Yes.

19 A Yes, if I saw the men come in, I would tell him
20 they were there, and I would also report to him what the
21 men were telling me.

22 Q What men?

23 A The two union delegates, Mr. Salvatore and Mr.
24 Elliot.

25 Q Now, you said you would also tell him what other

1 men said to you?

2 A The same basic men, I had conversations with Mr.
3 McDonald, Mr. Zegilla regarding 259's, you know,
4 protection, health insurance.

5 Q Did there come a time when Mr. Atherton, based upon
6 your report, gave you any instructions?

7 A In October, in the end of October Mr. Atherton
8 instructed me to hang on the bulletin board a letter that
9 he had dictated and had typed up stating that if the
10 economic picture did not improve by the end of the year,
11 starting January 1, there would be a 25 percent cut in
12 personnel and supervisory personnel would be expected to
13 take a 25 percent cut in their salary.

14 Q Did you post this notice?

15 A Yes, I did.

16 Q At the time you were given this notice to post,
17 did you have any conversations with Mr. Atherton?

18 A Yes, I did.

19 Q If you recall, will you tell us what Mr. Atherton
20 said to you at that time and what you said to him, if
21 anything?

22 A He said to me, to the best of my recollection, that
23 if the bargaining got rough this would probably ease it.

24 Q This was what month?

25 A This was the end of October.

1 Q Did you receive any complaints directly from
2 employees or from their labor organization concerning
3 this sign?

4 A There was general grumbling about it. Some people
5 had written on the sign various things.

6 Q Well, during this period when the organizational
7 drive began, other than what you have already testified
8 to, did you have any conversations, other conversations
9 with the service shop employees concerning either Local
10 259 or Local 355?

11 A Yes, I did.

12 I told them I didn't oppose them going to 259, it
13 didn't make that much difference to me.

14 Q Did you recall saying anything about Mr. Atherton's
15 proposals?

16 Or proposals he might make?

17 A No, sir

18 Q Did there come a time to your knowledge, when a
19 shop committee was appointed?

20 A I don't know when the shop committee was
21 appointed. After it was appointed, I did find out who
22 was on the shop committee.

23 Q Well, to your knowledge, who was on the shop
24 committee?

25 A Zegilla, Bob McDonald, and Walter Sitler.

1 Q How did you learn of this?

2 A Well, I was informed by Walter or one of them that
3 they were on the shop committee.

4 This was the committee that was going to bargain
5 and come up with the proposals that would eventually
6 wind up in the contract.

7 Q This was all prior to the election?

8 A Yes.

9 Q Did there come a time during the period from November
10 of 1974 until the -- during the period from November of
11 1974 until the beginning of January of 1975 when management
12 decided to lay off any employees?

13 A Yes. Management decided to lay off employees around
14 the middle of December.

15 I spoke to Mr. Atherton and I told him, you know,
16 we should wait maybe until after --

17 Q Who advised you of the decision to lay off
18 employees?

19 A Mr. Atherton Sr.

20 Q Where did your conversations with Mr. Atherton Sr.
21 take place?

22 A In his office.

23 Q If you recall, will you tell us what Mr. Atherton
24 Sr. said to you and what if anything you said to him.

25 A Mr. Atherton Sr. said that we should lay off a

1 few employees to get -- well, actually we wanted to
2 get the one employee, Mr. Zegilla --

3 Q What did Mr. Atherton say to you at that time?

4 A We have got to get rid of Mr. Zegilla, he's a
5 trouble maker.

6 Q And what else if anything did Mr. Atherton say?

7 A Just that he was on the committee, he was giving him
8 a rough time with his demands so he'd have to get rid of
9 him, he was a big mouth.

10 Q What did you say?

11 A I said we couldn't get rid of Mr. Zegilla because
12 Mr. Zegilla had more seniority than a couple of guys
13 below him, and you couldn't throw him out, going to union
14 contract, you couldn't get rid of him.

15 Q What if anything else did Mr. Atherton say?

16 A Do what has to be done, do what you have to do.

17 Q Did there come a time when you laid off employees?

18 A Yes, sir.

19 Q When did you begin to lay off employees?

20 A The first week in January, after the first.
21 I believe we laid off about five or six employees.

22 Q Do you recall the names of those employees?

23 A Bobby Fisher, Al Guzzi, there was a driver, I can't
24 recall his name.

25 That is all I can recall right now but I know there

1 was a couple of more.

2 Q Was Ed Zegilla laid off?

3 A At that time, yes, he was laid off.

4 Q At the time the employees were laid off were
5 they given anything by you?

6 A They were given a letter stating that they were
7 laid off for economic reasons.

8 Q Who signed that letter?

9 A I did.

10 Q Were there any other employees terminated during
11 that month?

12 A There was to be another batch of employees laid
13 off, I think, the week or two after, and I had the letters
14 typed and I had them in my desk and I was going to give
15 them out.

16 The shop knew who was going to get laid off and
17 when it was coming.

18 Q How did they know?

19 A I don't know how they knew but they knew.

20 You know, grapevine or whatever.

21 Q Had you made any prior announcement?

22 A Well, yes. People knew that more people were going
23 to get laid off.

24 Q How did they know that?

25 A Because I had made an announcement that more
people were going to be laid off the following Friday,

1 but nobody knew who it was, I had the letters in my
2 desk.

3 Q Can you fix a time period in this?

4 A Mid-January.

5 Q Was it before or after the National Labor Relations
6 Board election?

7 A Just before the National Labor Relations Board
8 election.

9 And then before I had given out the letters, it
10 was on a Friday, I was called in to Mr. Atherton Sr.'s
11 office and he told me he had just received a call from
12 Sam Meyers, the president of Local 259 and that I shouldn't
13 lay the rest of the people off.

14 I said, all right. I went out and I told, I started
15 to tell people who were going to get laid off that
16 they wouldn't get laid off and they already knew it.

17 JUDGE LEIBERMAN: Had you told the people who the
18 layoff was planned for that they would be laid off?

19 A Yes, I gave a couple of letters out already.

20 Q Now, this announcement that you had made concerning
21 the layoffs, when did that take place?

22 A The original announcement took place when the
23 first batch was laid off.

24 Q Who did you make the announcement to?

25 A To the general shop.

1 Q Did you call a meeting?

2 A Yes, I did.

3 Q Where did the meeting take place?

4 A In the shop.

5 Q What did you say at the time, if you recall?

6 A I don't recall it verbatim but it was something
7 that the layoffs were after January and there will
8 be layoffs and some men will have .

9 JUDGE LEIBERMAN: This was after Zegilla's layoff?

10 THE WITNESS: No, this was just before Zegilla's
11 layoff.

12 Nobody was laid off before January 1st.

13 Q Did you say anything else during that meeting
14 concerning other layoffs?

15 A Yes, there would be more people laid off.

16 Q Did you have any similar meetings following that?

17 A Not to my knowledge, no.

18 Q Following the layoffs of the first group of
19 employees, did anybody protest to you directly?

20 A Not to my knowledge, no.

21 Q Now, calling your attention to the month of
22 January 1975, did you have occasion to discipline any
23 other employees?

24 A Yes, sir.

25 Q Who?

1 Q Do you know when Mr. Zegilla was recalled?

2 A M Zegilla returned to work on a Thursday. I
3 think it was the second -- first or second Thursday of
4 the election.

5 I don't recall what exactly the date was.

6 Q Did you recall Mr. Zegilla?

7 A No, I didn't recall Mr. Zegilla. I was told Mr.
8 Zegilla was returning back to work.

9 Q Who told you this?

10 A Mr. Atherton Sr.

11 Q Where did the conversation with Mr. Atherton Sr.
12 take place?

13 A In his office.

14 Q What did Mr. Atherton -- I withdraw that.

15 What if anything did Mr. Atherton Sr. say to you
16 concerning Mr. Zegilla's recall, if you recall?

17 A He brought me into his office and told me he just
18 received a call, Mr. Zegilla will come back to work
19 Thursday.

20 Q And did Mr. Zegilla come back to work?

21 A Yes, he did.

22 Q Did you report to work on February 11th, 1975?

23 A Yes, sir.

24 Q What occurred on that day?

25 A On February 11th, that was the day I was discharged.

1 Q Who advised you of your termination?

2 A Mr. Atherton Sr.

3 Q Did you observe the union agent on the premises
4 that day?

5 A Yes, I did.

6 Q What time did you first see them?

7 A 10, 10:30.

8 Q Where did you observe them go, when you first saw
9 them?

10 A I first saw them when they were over by Mr.
11 McDonald talking.

12 Q Is that in the service area?

13 A Yes, it is.

14 Q What did you see them do after that?

15 A They walked through the parts room, they walked
16 into the showroom and into Mr. Atherton Sr.'s office.

17 Q You were able to see all of that?

18 A I was walking through the other side.

19 Q Did you observe them come out of Mr. Atherton
20 Sr.'s office?

21 A No, I didn't.

22 Q What time of day were you called in to Mr. Atherton
23 Sr.'s office?

24 A Sometime after 11, very shortly after 11.

25 Q Before going in did you have occasion to see where

1 the union agents were?

2 A No, I didn't.

3 Q Was anyone else present in Mr. Atherton Sr.'s office
4 besides yourself and he?

5 A No.

6 Q If you recall, will you tell us what he said to
7 you and what you said to him, if anything?

8 A Well, he told me to come in and close the door and
9 sit down.

10 He said union agents left his office after a
11 shouting match, and they demanded that I be terminated.

12 They wouldn't negotiate -- they wouldn't negotiate
13 a contract and that they had strike signs in the car and
14 that if I wasn't off the premises that day that they
15 would strike.

16 Q And did you say anything?

17 A I told him I couldn't believe it, I was with him
18 for 10 years.

19 He said there's nothing he could do about it, he
20 couldn't afford a strike at this time.

21 Q How long did the conversation take?

22 A About 10 minutes.

23 Q What did you do then?

24 A I left Mr. Atherton's office, I was in the
25 showroom, I passed a salesman who was a longtime salesman

1 there and I told him that I had just been fired.

2 He said he heard shouting and screaming coming from
3 the old man's office but he didn't know what it was about.

4 I left him and went into the parts room where I
5 saw Mr. Elliot on the telephone, I saw Mr. Sitler and
6 some various parts people.

7 I shook hands with the parts people, shook hands
8 with Mr. Sitler and he told me he was sorry that it
9 happened, that he had opposed it, but there was nothing
10 he could do, that he was sorry.

11 I left that area and I went into the service area.

12 I saw Mr. Salvatore and Mr. Zegilla, I walked past
13 them, went into my office, shook hands with some of my
14 other people, got in my car and left.

15 Q Where was Mr. Elliot when you spoke to Mr. Sitler?

16 A Mr. Elliot was in the parts room on the telephone.

17 Q How far away was he from Mr. Sitler?

18 A 15 feet.

19 Q Did you have any conversations with Mr. Elliot?

20 A No.

21 Q Following February 11, 1975 did you have occasion
22 to speak with Mr. Atherton again?

23 A Yes, I did. I called Mr. Atherton on February
24 12, 1975.

25 MR. WEINRICH: Your Honor, I have been sitting here

1 and I ask you to instruct those people on the
2 respondent's side of the table to refrain from making
3 remarks.

4 JUDGE LEIBERMAN: Well, I didn't hear any remarks,
5 but if it appears that any person in this room is
6 making remarks which interfere with the course of this
7 trial I will see to it that that person is put out of this
8 room.

9 MR. WEINRICH: Thank you, your Honor.

10 Q In that telephone conversation on February 12, 1975
11 if you recall, will you tell us what you said to Mr.
12 Atherton and what he said to you, if anything?

13 A I spoke to Mr. Atherton and told him that I would
14 like to talk to him about the fact that I was terminated,
15 why I was terminated, that I couldn't believe that
16 because the union demanded that I be terminated he
17 terminated me.

18 He said he'd be happy to talk to me but he didn't
19 want me to go to the shop. He agreed to meet me for lunch
20 the next day which was February 13th, at a restaurant.

21 Q Did you meet with him on February the 13th?

22 A Yes, I did.

23 Q What restaurant?

24 A Flynn's Restaurant in Bayshore.

25 MR. SCHNIPPER: Your Honor, I really have to object

1 to this whole line of questioning concerning the
2 conversation and the reasons given by Atherton to Mr.
3 Dazzo as reasons given by an employer are no way binding
4 upon the union.

5 I don't know what purpose they serve. I don't know
6 the truth of these allegations. There's no way of
7 proving what Mr. Atherton said.

8 We don't know what went on.

9 I'm really at a loss for words, as a matter of law,
10 since they're not binding upon the union I think all
11 this testimony concerning conversations between Atherton
12 and Dazzo should be struck.

13 JUDGE LEIBERMAN: Well, it may be they're tied in.
14 I take it counsel has a reason for this. I will permit
15 counsel, but if it is not tied in I will entertain a motion
16 to strike.

17 You may proceed.

18 Q Did you meet with Mr. Atherton?

19 A Yes, I did.

20 Q What did he say to you at that time?

21 A Well, I told him that I couldn't believe the fact
22 that the union had pressured him into getting rid of me.

23 I said there must have been some other reason.

24 He regretted that I had to be the lamb to go to
25 slaughter, but there was nothing he could do about it at

1 that time. He said perhaps in a month or two I
2 could be put back to work.

3 Still not being able to believe it, I asked him if
4 he would send a letter stating the reason why I was really
5 fired.

6 He stated that my work was okay, never had any
7 trouble with me. We've been together a long time.

8 We had lunch, we ended it and went our separate ways.

9 I think a day or two later I received a letter in
10 the mail along with my check.

11 Q He sent you a letter?

12 A Excuse me, the Friday, I went down to his office to
13 pick up my pay. He was reluctant to shake hands with me,
14 he told me that my pay was mailed to me. He didn't want
15 me around his premises at that time.

16 Q Did he send you a letter?

17 A Yes, he did.

18 Q Do you have that letter with you?

19 A Yes, I do.

20 Q Is that letter dated and postmarked?

21 A Yes, it is.

22 Q May I see it?

23 A Yes.

24 MR. SCHNIPPER: May we go off the record?

25 JUDGE LEIBERMAN: Yes. We will take a short recess.

1 Mr. Dazzo's testimony concerning the circumstances
2 of his discharge, especially the date of his discharge
3 and for the purpose of the reasons given to him by the
4 employer at the time.

5 MR. SCHNIPPER: I still see it irrelevant --

6 JUDGE LEIBERMAN: Well, it's relevant enough.
7 I'll receive it.

8 DIRECT EXAMINATION

9 Q (By Mr. Weinrich) Following your termination
10 from the employ of Atherton, Mr. Dazzo, did there come a
11 time when you had occasion to discuss the reasons for
12 your termination with any members of the shop committee?

13 A Yes.

14 Q With whom did you discuss the reasons -- with
15 which members or which members of the shop committee
16 if there were more than one did you discuss the reasons
17 for your termination?

18 A I discussed the reasons for my termination with
19 Mr. Sitler.

20 Q When did this discussion take place?

21 A July 11th.

22 Q Of what year?

23 A '75.

24 Q Where did the discussion take place?

25 A At my home.

1 Q Who was present?

2 A I myself, Mr. Sitler, Jimmy Balbo, Billy Reem
3 and Mr. Frank Filipelli.

4 JUDGE LEIBERMAN: Who are these other people?

5 THE WITNESS: Jimmy Balbo was the service writer
6 for Cadillacs, Billy Reem is the service manager and
7 Mr. Filipelli happens to be a neighbor of mine.

8 Q Will you tell us what Mr. Sitler said to you and
9 what you said to him, if you recall?

10 A Mr. Sitler stated to me that he was aware of the
11 fact that I was going to be terminated a week prior to
12 the termination.

13 Mr. Sitler also stated that he opposed it. Mr.
14 Sitler also stated to me that when he voiced his
15 opposition he was told by the other members of the
16 bargaining committee --

17 JUDGE LEIBERMAN: Did he say in what connection
18 he opposed it?

19 THE WITNESS: No, sir. But when he raised his
20 opposition he was told to shut up and don't make waves,
21 that they know what's best for the shop.

22 Q Did he say who his opposition was stated to?

23 A To the other men on the committee, and Peter Vath
24 and I think that's about all.

25 Q Did he say if anyone else was present?

1 A No, sir.

2 MR. WEINRICH: I have no further questions of the
3 witness.

4 MR. SCHNIPPER: I'd like to renew my motion at this
5 point, the motion to strike all testimony concerning
6 reasons given to Mr. Dazzo by Mr. Atherton for his
7 dismissal.

8 There is no evidence that the union was in any way
9 responsible and I don't think --

10 JUDGE LEIBERMAN: Well, general counsel has not
11 finished his case yet.

12 MR. SCHNIPPER: He is finished with this witness.

13 JUDGE LEIBERMAN: Motion is denied at this time.

14 MR. SCHNIPPER: Off the record?

15 JUDGE LEIBERMAN: For what purpose?

16 MR. SCHNIPPER: One statement is 28 pages.

17 JUDGE LEIBERMAN: Well, do you have more statements
18 than this, Counsel?

19 MR. WEINRICH: Well, I have some typewritten material
20 that Mr. Dazzo had submitted and did sign, which I am
21 also submitting to --

22 JUDGE LEIBERMAN: In view of this great amount of
23 material which you just turned over to counsel, and
24 being now a quarter after four, and I assume that
25 cross-examination of this witness will be rather lengthy,

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Anthony Dazzo		116	134	140
Frank Filippelli	142	145		
Walter Sitler	159	161		
Louis Salvatore	166	172	180	
Robert McDonald	181	191	200 202 208	204
Edward Zegilla	209	215	224	
Steven Elliot	225			
<u>EXHIBITS:</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>		
Respondent's:				
1		118		
2		132		134

P R O C E E D I N G S

1 JUDGE LIEBERMAN: Good morning, gentlemen.

2 The trial will be in order.

3 MR. SCHNIPPER: Good morning.

4 MR. WEINRICH: Good morning.

5 JUDGE LIEBERMAN: As I recall the trial situation,
6 the witness, Dazzo, had completed his direct examination
7 and is now available for cross-examination.

8 Am I correct?

9 MR. SCHNIPPER: Yes, your Honor.

10 JUDGE LIEBERMAN: Will Mr. Dazzo please resume the
11 stand.

12 Whereupon,

13 ANTHONY DAZZO,

14 called as a witness, having been previously sworn, was
15 examined and testified as follows:

16 JUDGE LIEBERMAN: Let me remind you, Mr. Witness,
17 that you are still under oath in this proceeding and
18 the obligations of the oath are still in effect.

19 THE WITNESS: Yes, sir.

CROSS EXAMINATION

20 Q (By Mr. Schnipper) Mr. Dazzo, were you ever
21 introduced to any union agent, and by "union agent" I
22 refer to Mr. Elliot or Mr. Salvatore, as the man that
23 they would see regarding the adjustment of grievances?
24
25

1 A No, sir.

2 Q About that notice of pay cuts that was posted,
3 when was that posted?

4 JUDGE LIEBERMAN: I didn't hear the beginning of
5 that question.

6 MR. SCHNIPPER: The notice of pay cuts in October
7 that was posted in the shop.

8 Q (By Mr. Schnipper) Do you recall your
9 testimony concerning that yesterday?

10 A Yes, sir.

11 Q Yes?

12 A Yes.

13 Q Who posted that?

14 A I posted it on the time clock, sir.

15 Q I beg your pardon?

16 A I did.

17 Q Was there a signature at the bottom?

18 A Yes.

19 Q Who signed it?

20 A Mr. Atherton Sr.

21 Q Am I correct in my recollection of your testimony
22 yesterday that you said you signed it?

23 A No, sir.

24 Q I may be wrong.

25 Concerning the layoffs in December, did you ever

1 advise Mr. Atherton that business was slow?

2 A No, sir.

3 Q Did he ever come to see you about the layoffs?

4 A No.

5 He called me into his office.

6 Q And what did he say?

7 A He would have to lay off some people.

8 Q Did he tell you why?

9 A Yes, he did.

10 Q What did he say?

11 A He said we would have to lay off Mr. Zegilla.

12 Q Did he say why?

13 A Yes, he did.

14 Q Why was that?

15 A Because Mr. Zegilla was a trouble maker.

16 Q Did he say anything about business being slow?

17 A No, sir.

18 Q You said yesterday that he said that you had to get
19 rid of Mr. Zegilla because Mr. Zegilla was giving him
20 trouble with demands?

21 A Yes, sir.

22 Q What kind of demands?

23 A Union demands.

24 Q Let me get this straight, this was in December,
25 wasn't it?

1 Q Does Atherton, in your acquaintance over a period
2 of time with him, would you say that he likes to run a
3 shop free of trouble makers and likes to have as little
4 trouble as possible?

5 A Yes, I would say so.

6 Q So if he was having trouble in the shop for any
7 reason and it could be abated by his discharging someone,
8 would he be likely to do that?

9 A I can't answer that.

10 Q Conjecture, you know the man over a period of
11 10 years, if you know.

12 JUDGE LIEBERMAN: You want this witness' conjecture?

13 MR. SCHNIPPER: I will withdraw that.

14 Q (By Mr. Schnipper) Over a period of 10 years
15 has Atherton ever gotten rid of anybody besides Zegilla
16 for causing trouble in the shop?

17 A Not to my recollection.

18 Q Has he ever asked you to lay off anyone who was
19 causing trouble in the shop?

20 A Not to my recollection, no.

21 Q You said on the day of the election you spoke to
22 Ed Zegilla about cornering employees?

23 JUDGE LIEBERMAN: Cornering?

24 MR. SCHNIPPER: Cornering employees, speaking to
25 them about the election.

1 Q (By Mr. Schnipper) Do you know who succeeded
2 you as service manager?

3 A Ernie Barter.

4 Q If you know, is Ernie Barter still the service manager
5 at Atherton Cadillac?

6 A No, he is not.

7 Q Do you know when he stepped down as service manager
8 with Atherton, approximately?

9 A Approximately in the middle of October.

10 Q The middle of October --

11 A '75.

12 Q '75?

13 A Yes.

14 Q Did you reapply for that job?

15 JUDGE LIEBERMAN: Did he what?

16 Q (By Mr. Schnipper) Did you reapply for the job
17 of service manager after it was vacated by Ernie Barter?

18 A I sent a resume to a post office box.

19 Q I don't think that was responsive to the question.

20 Did you apply for the job?

21 A I did not apply for that job, I sent a resume to a
22 post office box which, in turn, turned out to be Atherton
23 Cadillac.

24 Q So you did apply for the job?

25 A Unknowingly.

1 JUDGE LIEBERMAN: It will be received.

2 Your objection is overruled.

3 (Document previously marked as
4 Respondent's Exhibit 2 for
5 identification was received
6 in evidence.)

7 Q (By Mr. Schnipper) Were you ever offered the job
8 at Atherton Cadillac after the receipt of your resume?

9 A Was I offered the job?

10 Q Yes.

11 A Not exactly.

12 MR. SCHNIPPER: I have no further questions.

13 REDIRECT EXAMINATION

14 Q (By Mr. Weinrich) Mr. Dazzo, you were asked during
15 cross-examination concerning an application which you
16 made to Atherton Cadillac.

17 Following your sending the resume to -- what
18 you testified to as a post office box -- did you receive
19 any response?

20 A Yes, sir.

21 I received a telephone call from an employee of
22 Atherton Cadillac who noticed a self-addressed -- a
23 return self-addressed envelope with my name and return
24 address in the garbage in Mr. Atherton's office and called
25 me to inquire if I was coming back.

Q Now, you were asked, did you ever receive a response

1 from Mr. Atherton?

2 A I called Mr. Atherton on a Friday.

3 Q What Friday, the date, if you recall?

4 A This was probably -- I think it was Friday the 13th.

5 Q Of what month?

6 A Of October, if it was the 13th, a Friday was the
7 13th.

8 Q That would be 1975?

9 A 1975.

10 Q Did you have a discussion with Mr. Atherton at that
11 time?

12 A Yes, I did.

13 JUDGE LIEB: Is this after you sent the
14 application?

15 THE WITNESS: Yes, after I sent the application, after
16 I was called that it had been thrown out.

17 Q (By Mr. Weinrich) What did MR. Atherton tell
18 you at that time?

19 A That it was funny I should call, that he had
20 my application in front of his desk, in front of him
21 on his desk, he was going to call me.

22 I asked him if I would be considered for the job.
23 I asked him, I told him if he was looking for a service
24 manager, he responded yes, and he was going to call me.

25 He was impressed by the application. He said -- I

1 asked if it would be possible that I could return to
2 work, and he said he would let me know because he had set
3 up a dinner engagement with the shop committee men and
4 the union delegate for that previous -- for that Tuesday
5 after, because Monday was a holiday, Tuesday evening
6 they were having a dinner.

7 So if I would call him no later than Wednesday, he
8 would let me know.

9 Q Did you subsequently speak to Mr. Atherton?

10 A I spoke to Mr. Atherton on Wednesday morning. I
11 asked him if I would be able to return to work. He said
12 he hadn't received an answer from the union as of that
13 time.

14 I asked him did the fact that I had a case against
15 the union have any bearing on their decision --

16 MR. SCHNIPPER: Objection.

17 JUDGE LIEBERMAN: Overruled.

18 A (Continuing) He said, more or less, this is
19 what the issue is.

20 I again questioned him, again, I said, "In other
21 words, if I would drop my case against the union that
22 I would be able to come back to work?"

23 He replied, "Yes."

24 I said, "Then you are telling me, in other words,
25 that it is my decision, if I want to drop my case I can

1 have my job back?"

2 He said, "Yes."

3 We set up a luncheon date for the next Thursday,
4 the Thursday after the Wednesday.

5 JUDGE LIEBERMAN: You mean the next day?

6 THE WITNESS: The next day, yes, sir, which I
7 subsequently cancelled that afternoon.

8 Q (By Mr. Weinrich) Were you ever offered the job
9 by Atherton Cadillac?

10 A If I would drop my case against the union I could
11 return to work.

12 JUDGE LIEBERMAN: Atherton told you that?

13 THE WITNESS: Yes, sir.

14 JUDGE LIEBERMAN: In that telephone call on the
15 previous day?

16 THE WITNESS: That Wednesday.

17 JUDGE LIEBERMAN: During which you cancelled the
18 luncheon appointment?

19 THE WITNESS: Yes.

20 I cancelled the luncheon appointment that afternoon.

21 Q (By Mr. Weinrich) Now, you were also asked
22 during cross-examination if you had any conversations
23 with the union committee concerning occlusion in the
24 unit.

25 Do you recall being questioned about that, by

1 MR. SCHNIPPER: I call Walter Sitler.

2 Whereupon,

3 WALTER SITLER,

4 was called as a witness and, having been first duly sworn,
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 Q (By Mr. Schnipper) Mr. Sitler, where are you
8 employed?

9 A Atherton Cadillac.

10 Q What is your full name?

11 A Walter Sitler, S-i-t-l-e-r.

12 Q Your address?

13 A 3537 Elmhurst Drive, Wantagh, Long Island.

14 Q And you are employed at Atherton Cadillac?

15 A Yes.

16 Q In what department?

17 A Parts department.

18 Q Is that in the same area as the repair shop?

19 A Yes, within reason. We have our own window that
20 faces the repair shop.

21 Q You are not out on the repair floor?

22 A No, sir.

23 Q Who is your supervisor?

24 A Mr. Reems.

25 Q And what is his title?

1 A Parts manager.

2 Q Now, you heard testimony yesterday concerning a
3 meeting at Mr. Dazzo's house which took place on July 11th?

4 A Right.

5 Q And you heard testimony about that today also?

6 A Yes, sir.

7 Q Did you have any knowledge of Mr. Dazzo's termination
8 prior to the termination?

9 A No, sir.

10 Q Did you ever tell anybody that you did?

11 A I did not know of it, no, sir.

12 JUDGE LIEBERMAN: The question is, did you ever
13 tell anybody that you had such knowledge?

14 THE WITNESS: No, sir.

15 Q What exactly did you say at the meeting on July 11th
16 concerning what you heard?

17 A At Mr. Dazzo's house?

18 Q Yes.

19 A We had discussed his layoff. I was not in accord
20 with it.

21 JUDGE LIEBERMAN: "We" meaning who?

22 THE WITNESS: We who had visited Mr. Dazzo.

23 Q (By Mr. Schnipper) The people at Mr. Dazzo's
24 house?

25 A Yes.

1 JUDGE LIEBERMAN: Oh, those people discussed Dazzo's
2 layoff?

3 THE WITNESS: Yes, sir.

4 JUDGE LIEBERMAN: And you were not in accord with
5 Mr. Dazzo's layoff or what was being said?

6 THE WITNESS: I did not want to see anyone laid off.

7 JUDGE LIEBERMAN: And that is what you said to the
8 people who were there?

9 THE WITNESS: Yes, sir.

10 MR. SCHNIPPER: I have no further questions.

11 CROSS EXAMINATION

12 Q (By Mr. Weinrich) You testified in response
13 to Mr. Schnipper's questioning that you did not know of
14 Mr. Dazzo's termination prior to the time of his
15 termination, is that correct?

16 A That is correct.

17 Q And you also testified that on July 11th you told
18 Mr. Dazzo that you were not in accord with his layoff,
19 because you did not want to see anyone laid off?

20 A That is right.

21 Q Is it also correct that you told Mr. Dazzo on
22 July 11th that you did not want to see anyone laid off
23 in order to get a contract?

24 A Definitely so.

25 JUDGE LIEBERMAN: Definitely yes?

1 THE WITNESS: Yes, sir.

2 Q (By Mr. Weinrich) You told Mr. Dazzo that?

3 A Yes.

4 Q And didn't you also tell Mr. Dazzo on July 11th
5 that you had knowledge that people were seeking to have
6 him terminated prior to the date of his termination?

7 A People were seeking to have him terminated?

8 JUDGE LIEBERMAN: Mr. Witness, don't think out loud,
9 the reporter has to put it down. Think silently.

10 A (Continuing) There was talk of him being
11 terminated, yes.

12 Q And you had knowledge of that talk prior to the date
13 of his termination, did you not?

14 A Yes, I did.

15 Q And that talk that you had knowledge of, that was
16 talk among employees, is that correct?

17 A Yes, it was.

18 Q And that was also discussed among the bargaining
19 committee, was it not?

20 MR. SCHNIPPER: Objection. The bargaining committee
21 is subsumed by the term "employees".

22 JUDGE LIEBERMAN: Overruled.

23 A There was talk of that, yes, that it might happen.

24 Q (By Mr. Weinrich) When did that talk occur?

25 A It was constant, throughout the negotiations.

1 Q And the bargaining committee discussed making
2 that one of the proposals, did they not?

3 A No, sir.

4 Q Is it your testimony that they just discussed it
5 in general terms?

6 A Yes, sir.

7 Q Well, what was said in your presence by members
8 of the bargaining committee concerning Mr. Dazzo's
9 termination?

10 A Are you referring to the time at the bargaining
11 sessions with Mr. Atherton?

12 Q Was it discussed at the bargaining sessions with
13 Mr. Atherton?

14 A Not termination, no.

15 Q Was it discussed that if Mr. Dazzo was not the
16 instigator of trouble, there would be an easier time
17 negotiating a contract at bargaining sessions?

18 A I don't know if it was quite worded that way or not.

19 Q How was it worded?

20 A I don't recall.

21 JUDGE LIEBERMAN: Was that the sense of what was
22 stated by the bargaining committee at the negotiations?

23 THE WITNESS: It was in a sense that there was
24 trouble in the shop because of Mr. Dazzo, presented by
25 the bargaining committee.

1 Q (By Mr. Weinrich) And was it the sense of
2 those conversations that negotiations would be better
3 if Mr. Dazzo was not employed?

4 MR. SCHNIPPER: Objection.

5 Objection, he just answered the question.

6 What the sense was, he is asking for a conclusion.

7 JUDGE LIEBERMAN: Overruled.

8 Would the reporter, just so we have the question
9 in mind, I will ask the reporter to read that back.

10 (Question read back by the reporter)

11 A No, sir.

12 Q (By Mr. Weinrich) In meetings of the bargaining
13 committee, did you ever voice your opinion that it would
14 not be worth Mr. Dazzo's job in order to negotiate a
15 contract?

16 MR. SCHNIPPER: Objection.

17 I think that is irrelevant.

18 JUDGE LIEBERMAN: Overruled.

19 A No, sir, I did not.

20 Q But you did tell that to Mr. Dazzo, that you did
21 not think --

22 A Yes, sir, I did.

23 JUDGE LIEBERMAN: You didn't quite complete your
24 question.

25 Q (By Mr. Weinrich) You did not think it was worth

1 anybody's termination to negotiate a contract?

2 A Yes, sir.

3 Q Why did you say that if that was never discussed,
4 why did you tell that to Mr. Dazzo?

5 A Because I had heard from different people in the
6 shop that this was a possibility, and I would not want
7 this to happen if possible.

8 Q Who did you hear it from, which people?

9 A General members of the shop.

10 Q Did you hear it from Mr. McDonald?

11 A No, sir.

12 I don't recall.

13 Q Did you hear it from Mr. Zegilla?

14 A No, sir.

15 I have 30 people that come to me for parts and
16 whatnot, and general conversations of who said what I
17 have no recollection.

18 Q So you don't remember who said it to you?

19 A No, sir.

20 Q Did you ever discuss it with Mr. Elliot?

21 A No, sir.

22 Q Or Mr. Salvatore?

23 A No, sir.

24 MR. WEINRICH: I have no further questions.

25 MR. SCHNIPPER: I have no further questions.

JUDGE LIEBERMAN: You may step down.

1 MR. SCHNIPPER: I call Louis Salvatore.

2 Whereupon,

3 LOUIS SALVATORE,

4 was called as a witness, and having been first duly
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 Q (By Mr. Schnipper) Give your name to the reporter.

8 A Louis Salvatore.

9 Q Your address?

10 A 539 Old Country Road, Deer Park, New York.

11 Q Mr. Salvatore, by whom are you employed?

12 A Local 259, United Auto Workers.

13 Q What is your position with the union?

14 A Recording secretary.

15 Q Do you hold any other position?

16 A No.

17 Q What are your job duties?

18 A I organize, negotiate contracts, represent members
19 in shops that I handle, take minutes at meetings.

20 Q How long have you been employed in this capacity?

21 A As a recording secretary about five years.

22 Q And in total by the union?

23 A In total by the union, close to 17 years.

24 Q Calling your attention to January 17, 1975, there
25 was an election at Atherton Cadillac, did you meet Mr.

1 He says, "It is my decision."

2 I said, "Do you have the full sayin this shop?"

3 He says, "Yes."

4 So I says, "Well, I would like to see Mr. Atherton
5 then. Is Mr. Atherton available?"

6 He says, "No, he isn't."

7 "What time will he be in?"

8 So he says, "I don't think he will be in today."

9 "Will he be in tomorrow?" was my question.

10 He said, "Yes, he should be in about 10 o'clock."

11 And we went back, Steve Elliot and myself went back the
12 next morning to see Mr. Atherton.

13 Q Was that the last time you had spoken to Mr. Dazzo?

14 A Yes, it was.

15 Q Now, you were spokesman for the union at the
16 negotiating table, were you not?

17 A Yes, I was.

18 Q Did you at any time threatent a strike over Dazzo's
19 continued employment?

20 A No.

21 Q Did you ever condition the signing of a contract
22 or the reaching of any agreement on Dazzo's removal?

23 A No, I didn't.

24 Q Do you recall a negotiating session at which you
25 were told that Mr. Dazzo was going to be discharged?

1 A Yes.

2 Q Can you tell us what happened?

3 A Well, my recollection is that it was February 27th,
4 we went in for a negotiation session and we had just
5 very few money items, such as like maybe a difference
6 in Walter Sitler's pay, a difference on an incentive for
7 the polishers, the mechanics' pay, and that is what was
8 left that day.

9 The company had asked us if we had any more movement
10 to make, and I said, "Not at this time."

11 And Mr. Stone then asked us to leave the room, he
12 wanted to confer with Mr. Atherton.

13 So we left the room.

14 Q Who is we, I am sorry?

15 A "We", meaning Steve Elliot, Bob McDonald, Walter
16 Sitler and Ed Zegilla.

17 Q Then what happened?

18 A We left the room. We went into the showroom, waited
19 out there for a while and then we went into the service
20 area and came back into the showroom.

21 It was about a half-hour or so when Mr. Stone asked
22 us to come back in.

23 Q What did he say?

24 A He said -- well, he says, "Well, we let Anthony
25 Dazzo go. We fired him based on what we had found out

1 through our investigations of Richard Atherton Jr.
2 so we feel that is the problem and we are going to get rid
3 of the problem forever."

4 And he said, "That's it."

5 And he said, "Do you have any comment?"

6 I said, "I am not here to discuss Anthony Dazzo's
7 discharge, I am here to discuss a contract and I want to
8 discuss a contract, not Anthony Dazzo's discharge, that
9 is not my cup of tea."

10 Q Then what happened?

11 A We broke off.

12 Q Did you have a meeting with the men that night?

13 A Yes, we did.

14 Q What happened at that meeting?

15 A At the Bayshore Motel that night we had a meeting
16 and the guys -- well, of course had heard that Anthony
17 Dazzo was discharged and of course some of the people, I
18 don't know exactly, many passed remarks, "Most of our
19 problems are over now, let's settle this contract.
20 Let's lower our demands. Let's get in there and settle the
21 contract and settle it once and for all."

22 And at that time we had the recommendations of our
23 people, the committee.

24 We met on March 3rd at the next negotiation meeting.

25 Q Now, you heard testimony from Mr. Dazzo concerning

1 a dinner that Mr. Atherton was supposed to have at
2 which you were present?

3 A Yes.

4 Q Was that following his discharge?

5 Do you recall that dinner?

6 A Yes. It was in October sometime.

7 Q Where was the dinner?

8 A It was on Montauk Highway, I forget the name of the
9 place.

10 Q Who was present?

11 A Bob McDonald, Peter Bath, Richard Atherton Jr. and
12 Richard Atherton Sr. and myself.

13 Q Did Mr. Atherton at any point during that dinner
14 raise the subject of Mr. Dazzo's employment or rehire?

15 A No, sir.

16 Q Has Mr. Atherton Sr. or Jr. ever consulted you
17 concerning recommendations about rehiring Mr. Dazzo?

18 A No, sir.

19 MR. SCHNIPPER: I have no further questions.

20 CROSS EXAMINATION

21 Q (By Mr. Weinrich) What was the date of the first
22 time you met Mr. Dazzo?

23 A January 17th, the date of the election.

24 Q Then you met with him several days thereafter?

25 A It was on a Monday, it was the 20th.

1 Q And when you met with him you chose to see him
2 concerning layoffs, is that correct?

3 A Right.

4 Q To your understanding he was the service manager of
5 that shop?

6 A Exactly.

7 Q And he had laid off the employees, is that correct?

8 A Right.

9 Q And your purpose in going to him was to have those
10 employees recalled, is that correct?

11 A That is right.

12 Q You were not successful?

13 A Right.

14 Q How many negotiating sessions did you have between
15 the time of the election and the time you consummated the
16 contract?

17 A I could give you an exact amount, I got them written
18 down. It must have been about five or six, I don't know.

19 I will give you the exact amount, can I look at --

20 Q Please look if that will refresh your recollection.

21 A Seven.

22 Q What were the dates?

23 A The dates -- the dates were February -- wait a
24 minute, hold it.

25 January 22nd, February 3, February 11, February 20,

1 February 25, February 27 and March 3.

2 Q Now, Mr. Dazzo was discussed at several of the
3 negotiating sessions, is that correct?

4 A Not personally, no.

5 MR. LIEBERMAN: The answer is he was not discussed?

6 THE WITNESS: No.

7 Q (By Mr. Weinrich) Was the first mention of
8 Mr. Dazzo at the negotiating sessions at the time that
9 Mr. Stone advised you that Mr. Dazzo would be terminated?

10 A Well, you see, let me answer your question a
11 little different, because I know what you are driving at
12 and really, I never mentioned Dazzo's name as an
13 individual.

14 What I said was that management -- okay? -- if I
15 may, I would say that management was creating problems
16 in the shop.

17 I never used Anthony Dazzo's name as a person
18 himself, I said "management".

19 Q Is it your testimony that the name "Anthony Dazzo"
20 never came out of your mouth at a negotiating session?

21 A That is right.

22 Q And when Mr. Stone advised you that management
23 investigated the charges against Mr. Dazzo and had
24 decided to let Mr. Dazzo go, did they tell you who made
25 those charges?

1 A No.

2 Q You never made any charges against Mr. Dazzo?

3 A No.

4 Q And after your meeting with Mr. Dazzo on the Monday
5 following the election in January, January 22nd --
6 January 21st?

7 A January 21st.

8 Q -- you met with Mr. Atherton the next day?

9 A That is correct.

10 Q Did you complain to Mr. Atherton about Mr. Dazzo
11 at that time?

12 A No.

13 Q You had received many complaints from employees
14 about Mr. Dazzo, however, during the period in which
15 negotiations took place and in the period prior to the
16 election?

17 A It is possible.

18 Q You don't recall?

19 A I don't recall. The only thing I remember is that
20 layoffs that were taking place and the threats of more
21 layoffs and cuts in pay.

22 Q Was it reported to you who made those layoffs and
23 threatened to make more layoffs?

24 A Anthony Dazzo told me himself that he threatened
25 more layoffs the day after -- two days after we met, after

1 the election.

2 Q But when you discussed these things in negotiations,
3 your only comment was that management was making things
4 difficult?

5 A Yes.

6 Q During the course of the negotiations did you ever
7 threaten to strike?

8 A No -- yes, only one time. We threatened to strike
9 only if we didn't have a contract by March 1, as Local 355's
10 contract expired, by March 1 we had to have a contract.

11 That is the only time a threat of a strike was made.

12 Q Now, you testified that at the negotiating session
13 at which time you were advised that Mr. Dazzo would be
14 terminated, there were very few loose ends left to be
15 negotiated?

16 A Right.

17 Q But one of those loose ends was the pay rate for
18 mechanics, is that correct?

19 A Yes.

20 Q Was that for all mechanics or just for a mechanic?

21 A All mechanics.

22 Q That had not yet been agreed to?

23 A Exactly.

24 Q Does Local 259 have a pension fund?

25 A Yes, we do.

1 Q Is the contribution tied to the wage rate of
2 mechanics, the employer's contribution?

3 A Tied to the wage schedule?

4 Q Yes.

5 A No.

6 Q How is the contribution made?

7 A The contribution is so much per hour.

8 Q Based on the hourly rate of the employee?

9 A No, based on the amount of hours they work a month
10 or a week, whichever way.

11 Q Had the pension fund been agreed to at that time?

12 A I don't recall. It may have been and it may not.

13 I don't recall.

14 Q Does Local 259 offer a health and welfare plan?

15 A Yes, we do.

16 Q And the employer contributes to that plan?

17 A Yes.

18 Q Had the employer agreed to make contributions to
19 that plan?

20 A Yes.

21 Q As of the time that Mr. Dazzo was terminated?

22 A It was already in effect.

23 Q Did you ever tell Mr. Atherton during the course
24 of negotiating sessions that the men were inflexible
25 in their attitude towards the proposals made because Mr.

1 Dazzo harassed them and caused trouble?

2 A Did I ever tell him that?

3 Q Did you ever tell Mr. Atherton that?

4 A No, I never said Dazzo. Again, I never said
5 "Dazzo". All I said was management was creating
6 problems with threats of more layoffs and threats of
7 cuts in pay.

8 Q Did you say that was why the employees were
9 inflexible in their contract demands?

10 A All I said is, "it makes bargaining tough."

11 Q Those were your words, "It makes bargaining tough"?

12 A Yes, that was my words.

13 Q Did you see Mr. Dazzo on the day he was terminated?

14 A Did I see him?

15 Q Yes.

16 A In what respect?

17 MR. WEINRICH: I withdraw my previous question.

18 Q (By Mr. Weinrich) What did you do after Mr.
19 Stone advised you that Mr. Dazzo was terminated?

20 A The negotiations broke off and we went into the
21 work area in the shop.

22 Q Did you see Mr. Dazzo that day?

23 A Did I see him?

24 Q Yes.

25 A I don't recall whether I saw him or not, to tell

1 you the truth. I was not there to see Mr. Dazzo.

2 Q Did you consider Mr. Dazzo to be part of management?

3 A Definitely.

4 Q Now, you testified that you attended a dinner
5 meeting with Mr. Atherton in October.

6 A Right.

7 Q Is it your testimony that Mr. Dazzo was not discussed
8 at that meeting?

9 A That is correct.

10 Q That Mr. Atherton never discussed the reinstatement
11 of Mr. Dazzo with you?

12 A No, sir.

13 Q Have you ever discussed the reinstatement of Mr.
14 Dazzo with Mr. Atherton?

15 A I have not discussed it with him personally, no.

16 Q To your knowledge has any other member of Local 259's
17 staff discussed it with Mr. Atherton?

18 A Not to my knowledge.

19 Q Prior to October 16, 1975, did you ever advise
20 Mr. Atherton that you had no objection to Mr. Dazzo's
21 employment?

22 A By mail.

23 Q Before October 16th?

24 A I don't recall the date. I don't recall the date,
25 whether it was before or after. I don't recall the date.

1 Q Did you send that letter?

2 A My office did send that letter, yes.

3 Q Did you see the letter?

4 A I have not seen it today, no.

5 Q Have you seen it?

6 Did you see the letter when it was mailed?

7 A I did, yes.

8 Q Let me show you Respondent's Exhibit 2 in evidence
9 and ask you if that is the letter you are referring to?

10 (Handing to the witness)

11 A Yes, that is the letter I am referring to.

12 Q And to your knowledge, that letter, Respondent's
13 Exhibit 2, would be the first time your office notified
14 Mr. Atherton Sr. that it had no objection to Mr. Dazzo's
15 continued employment?

16 A That is correct.

17 Q Did you receive any response to that letter?

18 A Not to my knowledge.

19 Q Was that letter sent before or after your dinner
20 meeting with Mr. Atherton?

21 A I don't recall the exact date of the dinner meeting.

22 MR. WEINRICH: No further questions.

23 REDIRECT EXAMINATION

24 Q (By Mr. Schnipper) Did you ever tell Mr.

25 Atherton after Dazzo was discharged and before that letter

1 was sent, did you object to him being rehired?

2 A I never had no discussion with Mr. Atherton.

3 MR. SCHNIPPER: No further questions.

4 MR. WEINRICH: I have no further questions.

5 JUDGE LIEBERMAN: You may step down.

6 MR. SCHNIPPER: The respondent calls Robert McDonald.

7 Whereupon,

8 ROBERT MC DONALD,

9 was called as a witness and, having been first duly sworn,
10 was examined and testified as follows:

11 JUDGE LIEBERMAN: Please be seated.

12 DIRECT EXAMINATION

13 Q (By Mr. Schnipper) Give us your name and your
14 address.

15 A Robert McDonald, 1547 Brightshore Boulevard,
16 Bayshore.

17 Q Mr. McDonald, by whom are you employed?

18 A Atherton Cadillac.

19 Q In what capacity?

20 A As an A line mechanic.

21 Q How long have you been employed?

22 A Nine years.

23 Q Did you vote in the election?

24 A Yes, I did.

25 Q Did you have any active role in Local 355?

1 A Yes, I did.

2 Q What was that?

3 A Shop steward.

4 Q Are you also the shop steward now?

5 A Yes, I am.

6 Q What part of the shop do you represent?

7 A Line mechanics.

8 JUDGE LIEBERMAN: Line, l-i-n-e?

9 THE WITNESS: Yes.

10 JUDGE LIEBERMAN: That was 355 for which you were
11 shop steward?

12 THE WITNESS: Yes.

13 JUDGE LIEBERMAN: That was the previous representative?

14 THE WITNESS: Yes.

15 MR. SCHNIPPER: And still is.

16 Q (By Mr. Schnipper) Are you now shop steward for
17 359?

18 A Yes.

19 JUDGE LIEBERMAN: But you were shop steward for 355?

20 THE WITNESS: Yes, before that.

21 JUDGE LIEBERMAN: And now you are shop steward for
22 359?

23 THE WITNESS: Yes.

24 Q (By Mr. Schnipper) Do you recall a mechanic
25 named Fisher?

1 A Yes, I do.

2 Q Do you recall a discussion that you had with Mr.
3 Atherton concerning Fisher a few months before the
4 election?

5 A Yes, I do.

6 Q Will you tell us what that discussion was about?

7 A I was called up into Mr. Atherton's office.
8 Grace, the head bookkeeper, was there, and Mr. Atherton
9 was there, Sr.

10 He asked me why Bobby Fisher had no time ticket
11 turned in for the week.

12 Q What is a time ticket?

13 A A time ticket is the amount of work that you do
14 work on during the day and it is turned in at the end
15 of the week.

16 He asked me why there was no time ticket turned in
17 and I said the only thing that I know is that he
18 was working on Tony's truck, putting an engine in it.

19 Q Tony who?

20 A Anthony Dazzo.

21 Q He was not working on customers' cars?

22 A Right.

23 He had no time tickets.

24 Q What was the result of that conversation, if you
25 know?

1 A That is all I was asked and then I left.

2 Q Did you vote in the election on January 17th?

3 A Yes.

4 Q Will you tell us what happened in the shop after
5 the election?

6 A Everybody was cheering and just glad.

7 JUDGE LIEBERMAN: You mean on the day of the election?

8 MR. SCHNIPPER: I am sorry.

9 Q (By Mr. Schnipper) There were some men laid off
10 before the election, is that correct?

11 A Yes.

12 Q What happened within a few days of the election
13 in the shop itself?

14 JUDGE LIEBERMAN: That is after or before?

15 MR. SCHNIPPER: After.

16 A Well, it was threatened -- there was more layoffs
17 threatened. A man was going to get a \$50 reduction in
18 pay and the men got very upset.

19 They wanted to pull a work slowdown.

20 Q Who was threatening the layoffs and threatening
21 the pay cuts?

22 A Tony Dazzo.

23 Q Did you have an occasion a few days after the
24 election to have a conversation with Ernie Barter?

25 A Yes, I did.

1 Q What job was he performing?

2 A He was service writer at the time.

3 Q What does a service writer do?

4 A He writes up repair orders as the cars pull up
5 for service.

6 Q What did you observe?

7 A I had a ticket to be made out, I had went up there
8 to have him make it out and a customer walked in and
9 wanted a tuneup done on his car.

10 Ernie told the man he was sorry, he couldn't do it,
11 we were booked up.

12 Q What time was that?

13 A About 10, 10:30 in the morning.

14 JUDGE LIEBERMAN: When was this, do you remember?
15 Did he testify as to when it occurred?

16 MR. SCHNIPPER: I asked him if it was a few days
17 after the election.

18 Q (By Mr. Schnipper) Do you remember how long after?

19 A No, I don't.

20 JUDGE LIEBERMAN: That is sufficient.

21 Q (By Mr. Schnipper) What did you observe?

22 A I observed the customer say "Thank you" and leave.
23 I asked Ernie what the hell he was doing.

24 Q Were the mechanics working?

25 A There was two or three sitting on their benches

1 because there was no work in the rack.

2 There was no repair orders.

3 Q But Barter had told the customer to leave?

4 A Yes. He told him we were booked up and we couldn't
5 handle the work.

6 Q Were you, in fact, booked up?

7 A In no way.

8 Q Did you discuss, relate your conversation with him?

9 A When the man left I asked Ernie what the hell he
10 was doing, why did he send the man away. I said, "You
11 got three men sitting inside."

12 And he said those are the orders from Tony Dazzo,
13 to accept no work after 10 o'clock in the morning.

14 Q What was your response to that?

15 A I was shocked.

16 Q What was the response of the men?

17 A They were mad.

18 Q What did they do?

19 A They wanted to pull a work slowdown.

20 Q Did they?

21 A Yes, they did.

22 Q Tell us about the slowdown, what happens during
23 a slowdown?

24 A A slowdown, whatever job you have, if it would
25 normally take a half-hour, it takes three hours.

1 Q Does that result in a loss of pay for the men?

2 A It sure does.

3 Q Is it designed to get a point across?

4 A Yes, sir.

5 Q Following the slowdown and during the time --

6 JUDGE LIEBERMAN: Was it a slowdown or --

7 THE WITNESS: Yes, it was.

8 Q (By Mr. Schnipper) How long did the slowdown
9 last?

10 A Oh, about two and a half hours.

11 Q Following the slowdown and some time during the
12 negotiations, do you recall a conversation that you had
13 with Richard Atherton Jr.?

14 A Yes, I do.

15 Q Where did that conversation take place?

16 A Out in the shop area.

17 Q Who was present?

18 A It was me, Ed Zegilla, Pete Bath and Kenny Krecji
19 was there, Louis DeDonato.

20 Q Do you recall approximately how long after the
21 election it was?

22 A A few days maybe.

23 Q How long after the slowdown was it?

24 A I think it was the next day.

25 Q Tell us about that conversation.

1 A He wanted to know what the problem was, Richie,
2 why was the slowdown.

3 We told him what happened, there was work being
4 turned down at 10 o'clock when there was no work on the
5 rack and two or three men were sitting around doing
6 nothing.

7 Q What else did you tell him?

8 A I told him the men were aggravated, they pulled a
9 slowdown to try to get a point across.

10 Q What did he say?

11 A Well, he said -- he asked us if we knew, if we
12 had any recommendations for a new service manager.

13 Q Did you?

14 A Yes, we did.

15 Q Who?

16 A Ernie Barter.

17 Q And what did he do?

18 A What did who do?

19 Q Mr. Atherton.

20 A He asked us why we thought he was good and we told
21 him our reasons, and he left.

22 JUDGE LIEBERMAN: Are you offering those
23 conversations for the truth of what Mr. Atherton said?

24 MR. SCHNIPPER: Well, I suppose, yes, I am.

25 JUDGE LIEBERMAN: I just wanted to know.

1 MR. SCHNIPPER: This is being offered as a
2 conversation in which he took part.

3 JUDGE LIEBERMAN: All right, you may continue.

4 MR. WEINRICH: I move to strike the testimony.

5 JUDGE LIEBERMAN: Denied.

6 Q (By Mr. Schnipper) You were at negotiations,
7 were you not?

8 A Yes, I was.

9 Q During any of the negotiations did you hear anyone
10 ever demand Dazzo's discharge?

11 A No, I didn't.

12 Q Did you ever hear anyone suggest, state, that a
13 contract would not be signed unless Dazzo was discharged?

14 A No, I didn't.

15 Q Do you remember a negotiating session in which you
16 were told that Dazzo was to be discharged?

17 A Yes, I do.

18 Q What happened?

19 A Well, while we were discussing the contract
20 proposals Mr. Stone asked us to leave the room, which
21 we did.

22 We were called back in a little while later and
23 he said that Tony Dazzo was going to be terminated.

24 Q Was there any response?

25 A Not that I recall.

1 Q Did Lou Salvatore say anything?

2 A Well, when it was addressed to him, he said,
3 "We are not here to discuss anything but a contract.
We are not here to discuss Tony Dazzo's personal
5 involvement."

6 Q Do you remember a day in which a strike vote was
7 taken?

8 A Yes, I do.

9 Q What happened on that day?

10 A Well, it was during the coffee break, Steve Elliot
11 came down and he said in case there was no contract
12 agreement reached by March 1st, if we voted to strike we
13 would strike but before that he would have to get a
14 strike authorization from the International in Detroit
15 and he asked for hands to show if we would go on strike
16 as of March 1st.

17 He took the vote, and that was it.

18 Q Were you ever given any strike signs?

19 A Yes, I was.

20 Q Tell us about those.

21 A Well, it was like I said, during a coffee break
22 we went outside, his car was parked by me.

23 He opened his trunk and gave them to me. I in turn
24 put them in my trunk where they are to this day.

25 Q You never took them out of the trunk?

1 A No way.

2 Q Did anyone ever, at negotiations, threaten to
3 strike if Dazzo were not discharged?

4 A No.

5 MR. SCHNIPPER: No further questions.

6 I have one more question, I am sorry.

7 Q (By Mr. Schnipper) Do you ever recall a
8 meeting that Dazzo called to discuss layoffs, was such
9 a meeting held?

10 A No way.

11 CROSS EXAMINATION

12 Q (By Mr. Weinrich) You are presently an A
13 mechanic, Mr. McDonald?

14 A Yes.

15 Q Have you been an A mechanic for nine years that
16 you have been employed at Atherton Cadillac?

17 A Yes, I am.

18 Q You never held any other position with Atherton?

19 A No, I haven't.

20 Q You never received any promotions?

21 A No.

22 Q Was Mr. Dazzo working at Atherton when you started?

23 A Yes, he was.

24 Q What was he doing?

25 A A mechanic.

1 Q So you have known Mr. Dazzo for approximately
2 nine years?

3 A Yes.

4 Q For how long were you shop steward for Local 355?

5 A As long as that was our union, I would have to say
6 about eight years.

7 Q And during that period you participated in
8 grievance proceedings and discussed other shop problems
9 with the service manager?

10 A Yes.

11 Q And that would have been Mr. Dazzo for a period of
12 that time?

13 A Yes.

14 Q And during the organizing campaign by Local 259,
15 you were a member of the shop committee?

16 A Yes, I was.

17 Q And later a member of the negotiating committee?

18 A Yes.

19 Q And presently shop steward, is that correct?

20 A Yes.

21 Q Did you mention an incident involving a Mr. Fisher?

22 A Yes, I did.

23 Q That took place before the election?

24 A Yes.

25 Q About six months before the election, is that correct?

1 A Right.

2 Q Is this work stoppage that you and the other
3 employees engaged in, when was the date of that work
4 stoppage?

5 A I don't remember the date offhand.

6 Q Do you recall that the election took place on
7 January 17th?

8 A Yes.

9 It was a few days after that.

10 JUDGE LIEBERMAN: Was it a stoppage or a slowdown?

11 THE WITNESS: Slowdown.

12 MR. WEINRICH: I am sorry, I correct my question.

13 Q (By Mr. Weinrich) And prior to that time
14 employees had been laid off?

15 A Yes, they had.

16 Q Had Mr. Dazzo threatened more layoffs?

17 A Yes, he did.

18 Q When?

19 A When did he threaten more?

20 Q Right.

21 A I guess it was roughly the same time he laid the
22 others off.

23 Q Did he threaten it again after that, more layoffs,
24 that is?

25 A Well, the only time, I guess, is when he was ready

1 to lay off more people. I was never informed before
2 time.

3 Q Now, you testified that there came a time when
4 the service writer refused to accept work, is that correct?

5 A Yes.

6 Q You observed three mechanics idle that morning?

7 A Yes, I did.

8 Q Which three mechanics?

9 A I think it was Eddie Furtch, Louis DeDonato, and
10 it might have been Audie Poulman.

11 Q Were they A, B or C mechanics?

12 A There are only A mechanics in our shop.

13 Q Only A mechanics?

14 A Right.

15 Q Where were you when Mr. Barter allegedly told a
16 customer that he could not accept further work that day?

17 A I was right at his desk.

18 Q And Mr. Barter told you that he was acting
19 pursuant to Mr. Dazzo's orders, is that correct?

20 A Yes, he did.

21 Q You made no complaint at that time?

22 A To the men I did.

23 Q Did you make any complaint to Mr. Dazzo?

24 A No, I didn't.

25 Q Or to Mr. Atherton?

1 A No, I didn't.

2 JUDGE LIEBERMAN: What did you tell the men?

3 THE WITNESS: I told them he was turning away work
4 at the door.

5 JUDGE LIEBERMAN: Did you tell them why?

6 Did you tell them what Mr. Barter told you?

7 THE WITNESS: Yes.

8 JUDGE LIEBERMAN: Who did you tell this to?

9 THE WITNESS: The three mechanics that were not working.

10 JUDGE LIEBERMAN: What did the mechanis say to you?

11 THE WITNESS: They were very mad.

12 JUDGE LIEBERMAN: Did they say anything?

13 THE WITNESS: Not that I can recall.

14 Q (By Mr. Weinrich) Now, what other action had
15 Mr. Dazzo taken at that time against the employees, if
16 any?

17 A At that time, when there was work being turned away?

18 Q When there was work being turned away from the door.

19 A That is all I know of, you know.

20 JUDGE LIEBERMAN: Did we fix a time for this, this
21 incident of Barter turning away the work?

22 THE WITNESS: It was about 10, 10:30 in the morning.

23 JUDGE LIEBERMAN: What day?

24 THE WITNESS: I don't know the day.

25 JUDGE LIEBERMAN: With respect to the election and

158

1 the negotiations?

2 THE WITNESS: It was a couple of days after.

3 JUDGE LIEBERMAN: Later than what?

4 THE WITNESS: After the election.

5 JUDGE LIEBERMAN: Had negotiations already started?

6 THE WITNESS: Not really, I don't think so.

7 Q (By Mr. Weinrich) When was Frank Satava's

8 salary reduced, or when was Frank Satava told that his

9 salary was going to be reduced?

10 A The day of the slowdown.

11 Q The same day?

12 A Yes, the day the other men were threatened to be

13 laid off. It was within a couple of days within the

14 election. I am not sure what day it was.

15 Q Were you present when the men were notified that

16 they were going to be laid off?

17 A Yes, I was. When they were told that they were

18 going to be laid off, yes.

19 Not previous to that time, though.

20 Q Which men were these?

21 A The four that were slated to go?

22 Q Correct.

23 A It was -- what is his name? Jim McNeil. There

24 was Tommy, from the parts department. I don't know, there

25 was a couple of others, I don't recall offhand who they were

1 Q And who told them they were slated to be laid off?

2 A Tony Dazzo.

3 Q Did you suggest the slowdown or did somebody else
4 suggest it?

5 A It was a general opinion of the mechanics.

6 Q Based upon what?

7 A Based upon what was getting ready to happen, more
8 layoffs and reduction in pay for the men.

9 Q And had Mr. Dazzo ordered Mr. Barter to turn away
10 work at the door?

11 A Yes.

12 Q Were you present when Frank Satava was told his
13 salary was going to be cut?

14 A Yes, I was.

15 Q Who told him?

16 A Not at the time, after. He came over and told me
17 after.

18 Q Did he tell you who advised him of his cut in
19 salary?

20 A Yes, it was Tony Dazzo.

21 Q The work slowdown lasted for two and a half hours?

22 A Roughly around that time.

23 Q Did you make any announcement about the slowdown
24 to Mr. Dazzo?

25 A No way.

1 Q You just did less work than you would normally do?

2 A Right.

3 Q And, therefore, the men received less pay?

4 A Right.

5 Q Is Mr. Dazzo's salary in any way dependent on the
6 amount of work performed, if you know?

7 A Maybe in an overall yearly picture it might be.
8 I don't know as per day or week.

9 Q Now, you subsequently had a conversation with Mr.
10 Atherton Jr.?

11 A Yes, I did.

12 Q Did this conversation concern the slowdown or other
13 matters?

14 A It was the slowdown and other matters.

15 Q How long after the slowdown did it take place?

16 A It might have been the next day.

17 Q At that time you had been engaged in contract
18 negotiations?

19 A I really can't remember.

20 Q Well, it has been testified that the work slowdown
21 took place on or about January 30th or 31st.

22 Does that information refresh your recollection as
23 to the day of the slowdown?

24 A It is possible. Like I say, we had so many meetings
25 and there were so many things I can't remember dates.

1 Q Do you recall if your conversation with Mr.
2 Atherton Jr. concerning the work slowdown and other
3 problems took place sometime during the month of February?

4 A I really don't know. Like I said, I don't keep
5 track of dates.

6 Q How long after your discussion with Mr. Atherton was
7 Mr. Dazzo removed from his position?

8 A I really don't know.

9 Q Now, Mr. Atherton Jr. asked you what the problems
10 were in the shop and why the work slowdown occurred.

11 A Right.

12 Q And did you tell Mr. Atherton Jr. that Dazzo had
13 been turning away work and that the men had been upset
14 by the proposed layoffs?

15 A Yes, I did.

16 Q So is it correct that the work slowdown was a
17 direct result of actions taken by Mr. Dazzo?

18 A Yes.

19 Q Had you ever discussed Mr. Dazzo with Mr. Atherton
20 Jr. before that occasion?

21 A No, I didn't.

22 Q Or after?

23 A Not to my knowledge.

24 I didn't, no.

25 Q Did you ever hear Mr. Dazzo discussed during

1 negotiating sessions?

2 A No, I didn't.

3 Q No discussions whatsoever?

4 A No.

5 Q Thename was nevermentioned?

6 A As far as I can remember, no, it wasn't.

7 Q Did you report your conversation, the conversation
8 that you had with Mr. Atherton Jr. to Mr. Elliot?

9 A No, I don't think so.

10 Q Prior to his becoming service manager, Mr. Barter
11 was a member of the collective bargaining unit, was he not?

12 A Yes, he was.

13 Q Is Mr. Barter still in the employ of Atherton?

14 A Yes, he is.

15 Q In what capacity?

16 A Service writer.

17 Q Who is the present service manager?

18 A Frank Peppini.

19 Q Had he worked for Atherton prior to becoming service
20 manager?

21 A No.

22 MR. WEINRICH: I have no further questions.

23 REDIRECT EXAMINATION

24 Q (By Mr. Schnipper) Mr. McDonald, who decided
25 to call the slowdown?

1 would read February 1st?

2 A Yes.

3 JUDGE LIEBERMAN: You may continue.

4 MR. SCHNIPPER: I have no further questions.

5 MR. WEINRICH: I have no further questions.

6 JUDGE LIEBERMAN: You may step down.

7 MR. SCHNIPPER: I call Edward Zegilla.

8 Whereupon,

9 EDWARD ZEGILLA,

10 was called as a witness and having been first duly sworn,

11 was examined and testified as follows:

12 JUDGE LIEBERMAN: Please be seated.

13 DIRECT EXAMINATION

14 Q (By Mr. Schnipper) Give your name.

15 A Edward Zegilla, Z-e-g i-l-l-a.

16 Q Your address?

17 A 98 Lukens Avenue, Brentwood.

18 Q Where are you employed, Mr. Zegilla?

19 A Atherton Cadillac.

20 Q What is your job?

21 A A mechanic.

22 Q Did you vote in the union election?

23 A Yes, I did.

24 Q Were you on layoff at that time?

25 A Yes. During the election, yes.

1 Q Do you remember when you were laid off?

2 A Approximately one week before the election took place.

3 Q Do you have any idea what your salary was a
4 week prior to your layoff?

5 A Exactly, no. Approximately, it would have to be
6 in the range of five hundred to seven hundred dollars
7 a week, that was my average, leading right up to the day
8 that I was laid off.

9 Q And what was your guarantee?

10 A 30 hours at \$6 an hour. It worked out to
11 approximately 160, 180 dollars, I am not sure. I never
12 made the guarantee.

13 Q So you were making considerably more?

14 A Considerably more.

15 JUDGE LIEBERMAN: You mean you never made the
16 guarantee?

17 THE WITNESS: I was well over it.

18 MR. SCHNIPPER: He never made as little as the
19 guarantee.

20 JUDGE LIEBERMAN: I see.

21 Q (By Mr. Schnipper) Do you recall ever
22 participating in a shop meeting which Mr. Dazzo called
23 for purpose of discussing layoffs?

24 A Never.

25 Q Were you a committeeman for the union?

1 on February 19th.

2 Q And what happened at that meeting?

3 A After all the members signed all the necessary
4 forms to be included in the dental and medical coverage,
5 Steve Elliot and -- Steve Elliot and Lou Salvatore asked
6 us to stay.

7 He said he wanted to discuss some issues with us.
8 Ernie Barter had stayed behind that evening and had
9 mentioned to Steve Elliot and Lou Salvatore and myself,
10 and there might have been somebody else there at the time,
11 that he had been asked by Mr. Atherton --

12 Q Jr. or Sr.?

13 A Sr.

14 Q Yes?

15 A If he would take the job of service manager, and
16 not to give him an answer right away, to think about it
17 over the weekend and let him know what his decision was.

18 Q What job was he performing at that time?

19 A Service writer.

20 Q Prior to this meeting do you recall the
21 conversation between Richard Atherton Jr. and a number
22 of employees at which you were present?

23 A Yes.

24 Q Do you remember when tha- was?

25 A It was some time shortly after the election, the

1 exact date I can't recall.

2 Q Who was there, where did it take place?

3 A It took place in the shop, in the work area.

4 Present was Bob McDonald, myself, Peter Bath, Kenny --

5 Ken Krecji and a couple of other mechanics.

6 There was a considerable number of shop personnel
7 present at that meeting.

8 Q And Atherton Jr. came out into the shop?

9 A Right.

10 Q What was said, to the best of your recollection?

11 A He asked us what the problem seemed to be in the
12 shop, why all the turmoil, work slowdowns, and we had --
13 we told him that Tony Dazzo had been creating a lot of
14 problems, harassing the men, turning work away at the
15 door. It was affecting our salary, all around, the
16 general working conditions were lousy.

17 He disappeared for about a period of 10 minutes.
18 He went back towards the office, I don't know where he
19 went.

20 He could have gotten a drink of water, I don't know.
21 He came right back and he said, "Does anybody have any
22 suggestions as to who would make a good service manager?"

23 At that point Bob McDonald recommended Ernie
24 Barter for the job.

25 Q Was that the end of the conversation?

1 A That was basically it.

2 Q Do you recall a negotiation session at which you
3 were told that Dazzo was to be discharged?

4 A Yes, I do.

5 Q Who told you that?

6 A Lou Stone.

7 Q What was the response spoken to that?

8 A One of a little bit of surprise. Everybody turned
9 and looked at each other because it was totally
10 unexpected.

11 Q Did anybody say anything? Did Stone say anything
12 after that?

13 A Stone came out with -- Stone's words were something
14 to the effect, "Will it make bargaining easier if we
15 were to let Dazzo go?" And there was a couple of minutes
16 of silence and looking around the room, and I believe --
17 then I believe Lou Salvatore said that he was not there
18 to negotiate Tony Dazzo's dismissal, he was there to
19 negotiate a contract.

20 However, he would take this news back to the men
21 and with that the meeting broke up for the day.

22 JUDGE LIEBERMAN: What day?

23 MR. SCHNIPPER: I have no further questions.

24 JUDGE LIEBERMAN: What day was that?

25 THE WITNESS: The contract negotiations.

1 JUDGE LIEBERMAN: What date?

2 MR. SCHNIPPER: What date?

3 THE WITNESS: The specific date?

4 MR. SCHNIPPER: For the record, Mr. Zegilla is
5 consulting his pocket diary.

6 THE WITNESS: It would have to be around the 27th --
7 it would have to be the 27th, that was the negotiating
8 date prior to the last.

9 MR. SCHNIPPER: I have no further questions.

10 CROSS EXAMINATION

11 Q (By Mr. Weinrich) Mr. Zegilla, during the
12 course of your testimony, you on two occasions referred
13 to your diary.

14 May I ask you to see that, please.

15 A Yes, sure.

16 (Handing to Mr. Weinrich)

17 Q Did you participate in all of the negotiating
18 sessions?

19 A Yes, I believe so.

20 I might have missed one when I was on layoff, I
21 am not sure.

22 Q When did you start keeping this calendar that
23 you referred to?

24 MR. SCHNIPPER: Objection, the calendar is not in
25 evidence.

1 meeting was for.

2 Q Was there a shop meeting on February 27th?

3 A I believe there was, I cannot swear to it.

4 I did not mark everything down.

5 Q Let me show you your calendar.

6 (Handing to the witness)

7 A Right, it is marked.

8 Q Do you know what was discussed at that shop meeting?

9 A That would be the meeting, that night, that was
10 for the purpose of informing the men that Tony Dazzo
11 had been removed from his job.

12 Q Do you know that independently of your own calendar?

13 A Yes.

14 Q Your calendar makes no reference to the purpose
15 of that shop meeting, does it?

16 A No.

17 It was a very, you know, large event in the contract
18 negotiations, not easily forgettable.

19 Q You say that was a large event in the contract
20 negotiations, what was a large event?

21 A That Tony Dazzo had been removed. I mean, it is
22 not a holiday discussion.

23 Q That had been something that you had been pushing
24 for something that you would achieve, is that correct?

25 MR. SCHNIPPER: Objection.

1 JUDGE LIEBERMAN: Overruled.

2 A No.

3 Q What made it a large event?

4 A Because it was totally unexpected.

5 Q And because of its unexpected nature you find
6 it difficult to forget?

7 A Right.

8 Q That had never been discussed at any of the other
9 shop meetings, is that correct?

10 A No.

11 Q Do you recall if at the shop meeting of the 27th
12 that because of that large unforgettable event that
13 your demands were reduced?

14 A Yes. A vote was taken and the men were asked.

15 Q If it would reduce their demands, now that Mr.
16 Dazzo had been removed?

17 A The men were asked if they would have any other
18 considerations to make towards the contract demands,
19 in light of Dazzo's removal.

20 Q And it was voted on?

21 A It was suggested. Suggestions were made, taken off
22 the floor by different men.

23 Q And the demands were made based on his removal?

24 A To an extent, yes.

25 Q Was it ever voted on that the men would stay

1 unnegotiable in their demands unless Mr. Dazzo was
2 removed?

3 A Could you restate the question?

4 Q I will restate the question.

5 Did you ever vote prior to the 27th that you would
6 not modify your proposals unless Mr. Dazzo was removed?

7 A No.

8 We never did vote, it was just a general feeling amongst
9 the men, as long as Tony was there and we had to live
10 with Tony, we wanted as much money as we could possibly
11 get out of the contract.

12 He was affecting our income.

13 Q And you discussed that during the bargaining
14 sessions?

15 A No. I don't believe that was ever really discussed
16 during the bargaining sessions, how the men themselves
17 felt.

18 Q Did you ever discuss during the bargaining
19 sessions that the men wanted more money because Mr.

20 Dazzo's actions were affecting their income?

21 A No.

22 Q Was it ever discussed during the bargaining session
23 that Mr. Dazzo's actions were in fact, affecting the
24 men's income?

25 A No, but it was stated to Mr. Atherton that the men's

1 attitude was such that he is creating hell in the shop
2 for the men.

3 Q And Mr. Atherton was told that is why the contract
4 proposals were not being changed by the men?

5 A He was told that it makes it rough to negotiate a
6 contract under the conditions that we had to live with
7 in the back.

8 Q Did you specify the conditions that you had to
9 live with?

10 A No, not specifically.

11 Q You didn't tell him that Mr. Dazzo was one of those
12 conditions?

13 A No.

14 Q And that Mr. Dazzo was affecting your income?

15 A We never told Mr. Atherton Sr. that. We had
16 mentioned to Mr. Atherton Jr. what had been going on
17 in the back.

18 He came out and wanted to know and we told him.

19 Q When did you return to work at Atherton Cadillac?

20 A Approximately a week and a half after the election.

21 Q That would have been during the last week in
22 January or was it the first week in February?

23 A I would say the last week in February, probably.

24 Q Now, prior to that time you had spent a good deal
25 of time at the Atherton shop while you were unemployed?

1 A Right. I was in and out on occasions.

2 Q Did Mr. Dazzo ever ask you to leave?

3 A I believe only on one occasion he asked me to leave.

4 Q Were you involved in negotiations which led to
5 reinstatement?

6 A Excuse me, I didn't hear that question.

7 Q Were you involved in negotiations which led to
8 your recall from layoff?

9 A No, I was not.

10 Q Do you currently hold a position in the union?

11 A No, I don't.

12 Q Were you working on February 11th?

13 A February --

14 Q February 11, 1975?

15 A I could have been. That was just around --
16 February 11th?

17 Q That was a Tuesday.

18 A Yes. I am trying to think of when the election date
19 was.

20 A The election date, the testimony is that the
21 election was held on Friday, January 17th.

22 A Friday, January 17th, and what date do you want
23 to know now?

24 Q February 11th.

25 JUDGE LIEBERMAN: Let the record show that the

1 witness is consulting his diary again.

2 A The election was held on the 17th?

3 Q January 17th.

4 A And you want to know if I was back there in
5 February?

6 Q The 11th.

7 A Yes, definitely.

8 Q Was there a period of time during the month of
9 February when there was no service manager?

10 A No.

11 Q Is it your testimony that Mr. Barter immediately
12 became service manager upon the termination of Mr. Dazzo?

13 A I would assume so, although Mr. Atherton never
14 made a formal statement. Ernie was in the area where
15 the service manager stays when running the shop, he was
16 no longer at the service desk. I don't know if he was in
17 turn the service manager or service writer, but I know
18 that Ernie Barter was there and Tony Dazzo was not.

19 Q Do you know if he was acting temporarily?

20 A I have no way of knowing this.

21 I have no way of knowing the agreement between
22 Mr. Atherton and Ernie Barter.

23 MR. WEINRICH: I have no further questions at
24 this time.

25 MR. SCHNIPPER: Just one or two.